(18)

Supreme Court, U.S.
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No. 98-1856

IN THE

Supreme Court of the United States

LEILA JEANNE HILL, *et al.*
Petitioners,
vs.

THE STATE OF COLORADO, *et al.*,
Respondents.

On Writ of Certiorari to the
Supreme Court of Colorado

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED MAY 17, 1999
CERTIORARI GRANTED SEPTEMBER 28, 1999

315 pp

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I. JEFFERSON COUNTY DISTRICT COURT No. 93 CV 1984 (For clarity and brevity, pursuant to Supreme Court Rule 26.5, formal matters, including computer docketing codes, have been omitted)

Date	Proceedings
10-01-93	COMP FOR DECLARATORY JUDGEMENT & INJUNCTIVE RELIEF
10-07-93	SUMM W SVC ON DAVID THOMAS ON 10-1-93
	SUMM W SVC ON CITY OF LAKEWOOD ON 10-1-93
	SUMM W SVC ON GALE NORTON ON 10-1-93
	SUMM W SVC ON ROY ROMER (STATE OF COLO) 10-1-93
	***
10-18-93	MOTN FOR ENLARGE TIME TO ANSWER FOR GALE NORTON & STATE OF COLORADO & ROY ROMER
10-19-93	ORD GRANT DEFT ENLARGE OF TIME TO 11-1-93–MCV
	***
10-22-93	ANSW OF DEFT CITY OF LAKEWOOD
11-01-93	ANSW OF DEFTS STATE OF COLO & GALE NORTON
	***
12-06-93	NOTC TO SET
	MOTN FOR PRELIMINARY INJUNCTION W REQUEST FOR ACCELERATION
	MISC APPLICATION FOR SPECIAL

ADMISSION

Date	Proceedings
	MOTN FOR LEAVE TO FILE MEMO IN EXCESS OF 10 PGS
12-13-93	NOTC OF HEARING
12-16-93	MISC JOINT UNOPPOSED MOTN FOR ENLARGEMENT OF TIME
	ORD APPRVING ENLARGEMENT OF TIME FOR 20 DAYS–GFP
	***
12-17-93	NOTC AMENDED NOTC OF HEARING
	***
01-10-94	MOTN JOINT MOTN TO FILE RESP BRIEF IN EXCESS OF 10 PAGES
01-11-94	ORD DENYING DEFS MOTN TO FILE RESP BRIEF IN EXCESS OF TEN PAGES--GFP
	***
02-11-94	ORD CASE MGMT ORD--GFP
03-01-94	MEMO IN SUPPT OF PRELIM INJUNCT MOTN & ON THE TRIAL OF THE MATTER
03-07-94	MOTN JOINT MOTN FOR SUMMARY JUDGMENT
	BREF IN SUPPORT OF JOINT MTN FOR SUMMARY JUDG
	MISC APPENDIX OF AFFI AND DISCOVERY RESPONSES IN SUPPORT OF DEFT'S JOINT MTN FOR SUMMARY JUDG

Date	Proceedings
03-21-94	RESP TO PLAS MEMO IN SUPPORT OF PRELIMINARY INJUNCTION
03-24-94	BREF PLA BRIEF IN SUPPT OF CROSS-MOTN FOR SUMM JUDG & IN OPPOSITION TO DEFS JOINT MOTN FOR SUMM JUDGMENT
03-24-94	MOTN PLA CROSS-MOTN FOR SUMM JUDGMENT
	***
03-30-94	RPT OF EXPERT WITNESS FOR PLAS, WM BROWN
	CERT RULE 16 DISCLOSURE CERT FOR ALL PLAINTIFFS
	***
04-01-94	AFFI OF MARIANNE LA FRANCE
	RPT EXPERT REPORT OF WARREN HERN
04-01-94	CERT PRETRIAL DISCLOSURE CERT OF DEFTS
04-04-94	REPL MEMO IN SUPORT OF PLAS MOTN FOR PRELIMINARY INJUNCTION & ON THE TRIAL OF THE MATTER
04-11-94	BREF DEFTS RESPONSE BREF TO CROSS MOTN FOR SUMMARY JUDGMENT
04-18-94	BREF REPLY BREF IN SUPPORT OF CROSS MOTN FOR SUMMARY JUDGMENT
04-22-94	ORD RE: DEFTS MOTN FOR SUMMARY JUDGMENT--GFP
05-26-94	NOTC CT OF APPEALS: NOTICE OF APPEAL
05-25-94	NOTC CT OF APPEALS: NOTICE OF FILING APPEAL

Date	Proceedings
06-02-94	DESG OF RECORD ON APPEAL
06-15-94	DESG OF ADDL PARTS OF THE RECORD ON APPEAL BY DEFTS GALE NORTON & STATE OF COLORADO

II. COURT OF APPEALS OF COLORADO, NO. 94CA0856 (For clarity and brevity, pursuant to Supreme Court Rule 26.5, formal matters, including computer docketing codes, have been omitted)

DATE	PROCEEDINGS
	***
05/23/1994	NOTICE OF APPEAL FILED
	***
5/26/1994	TRIAL CRT REGISTER OF ACTIONS RECEIVED
06/02/1994	ADVISORY COPY DESIGNATION OF RECORD RECEIVED
06/21/1994	ADVISORY COPY RECEIVED LTR FROM ATTY TO T/C CLERK RE: REG OF ACTIONS
08/09/1994	LOWER COURT RECORD RECEIVED 1 VOLUMES
	***
08/24/1994	LOWER COURT RECORD FILED 1 VOLUME
08/24/1994	NOTICE OF FILING RECORD ISSUED
	***
09/16/1994	JURISDICTIONAL SCREENING DUE 09/16/1994
	***

DATE	PROCEEDINGS
09/22/1994	SUPPLEMENTAL LOWER CRT RECORD RECEIVED 1 VOLUME (ORIGINALLY DESIGNATED).
09/30/1994	SUPPLEMENTAL LOWER CRT RECORD FILED 1 VOLUME (ORIGINALLY DESIGNATED).
09/30/1994	NOTICE OF FILING RECORD ISSUED SUPPL-1 VOL (ORIG DESIGN) OPEN BRF REMAINS DUE.
10/03/1994	OPENING BRIEF FILED
	***
10/27/1994	SUPPLEMENTAL LOWER CRT RECORD RECEIVED 1 VOLUME - ORIGINALLY DESIGNATED.
11/03/1994	SUPPLEMENTAL LOWER CRT RECORD FILED 1 VOLUME - ORIGINALLY DESIGNATED.
11/03/1994	NOTICE OF FILING RECORD ISSUED SUPPL-1 VOL (ORIG DESIGN) ANS BRFS REMAIN DUE.
11/04/1994	MOTION OR REQUEST AMICUS BRIEF FILED CITY OF BOULDER NOTED PM
11/04/1994	RESPONSE AMICUS BRIEF DUE 11/14/1994
11/04/1994	AMICUS BRIEF FILED CITY OF BOULDER - ACCEPTED PER ORDER OF 11/22/94

DATE	PROCEEDINGS
11/07/1994	MOTION OR REQUEST AMICUS BRIEF FILED PLANNED PARENTHOOD (COFS ON AMICUS BRF) - NTD CPC
11/07/1994	RESPONSE AMICUS BRIEF DUE 11/17/1994 (TO MTN BY PLANNED PARENTHOOD)
11/07/1994	AMICUS BRIEF FILED PLANNED PARENTHOOD - ACCEPTED PER ORD OF 11/22/94
11/07/1994	ANSWER BRIEF FILED JOINT WITH REPLY BRIEF DUE 11/24/1994
11/22/1994	ORDER AMICUS BRIEF GRANTED PLANNED PARENTHOOD - NOT TO PARTICIPATE IN ORALS
11/22/1994	ORDER AMICUS BRIEF GRANTED CITY OF BOULDER - NOT TO PARTICIPATE IN ORALS
11/23/1994	MOTION OR REQUEST ORAL ARGUMENT FILED
11/23/1994	REPLY BRIEF FILED
	***
03/17/1995	SUPPLEMENTAL AUTHORITIES/CITES FILED
03/27/1995	SUPPLEMENTAL AUTHORITIES/CITES FILED
03/27/1995	RESPONSE OTHER FILED TO SUPPLEMENTAL AUTHORITIES FILED BY APPELLEES
	***

DATE	PROCEEDINGS
05/12/1995	NOTICE ORAL ARGUMENT ISSUED 06/20/1995 RESET TO 9:00 A.M. PER TX DIV V
06/09/1995	SUPPLEMENTAL AUTHORITIES/CITES FILED
07/13/1995	OPINION AFFIRMED OPINION ANNOUNCED VACATED BY US SUPREME COURT 2/27/97-MANDATE RCLD
07/13/1995	MANDATE DUE 07/28/1995
07/25/1995	PETITION FOR REHEARING FILED
08/17/1995	MANDATE DUE 09/18/1995
08/17/1995	PETITION FOR REHEARING DENIED DIV V
09/18/1995	PET/WRIT OF CERT RECEIVED 95SC593
	***
02/26/1996	ADVISORY COPY PET/WRIT OF CERT DENIED 95SC593
03/20/1996	LOWER COURT RECORD RETURNED 2VOLS
	MANDATE ISSUED TO T/C WITH OPINION
02/27/1997	ADVISORY COPY PET/WRIT OF CERT GRANTED 95-1905 US SUPREME COURT
02/27/1997	OPINION WITHDRAWN 95-1905 U S SUP CT ORDER
03/03/1997	FURTHER PROCEEDINGS DUE 04/17/1997 SEE US SUPREME CT 2-27-97 PENDING

DATE	PROCEEDINGS
03/19/1997	MOTION OR REQUEST OTHER FILED RECALL MANDATE-SIGNED BY ALL ATTYS
03/21/1997	ORDER OTHER GRANTED RECALL MANDATE
03/21/1997	MANDATE RECALL OF MANDATE ISSUED SEE ORDER OF 3-21-97
3/21/1997	CASE CASE ASSIGNED 03/21/1997 DIV V-EGR ALS SIR (U S SUP CT ORDER 95-1905)
	***
03/31/1997	ADVISORY COPY OTHER RECEIVED NOTICE FROM THE US SUPREME COURT 95-1905
04/02/1997	LETTER MAILED TO US SUPREME COURT IN RESP TO LTR RECD 3-26-97
	***
04/24/1997	ORDER SUPPLEMENTAL BRIEF ISSUED SIMULTANEOUS BRIEFS 10 PGS DUE ALL PARTIES
04/24/1997	OTHER SUPPLEMENTAL BRIEF DUE 05/14/1997 10 PGS FROM ALL PARTIES-ROUTE TO ALS EGR SIR
05/14/1997	RESPONSE SUPPLEMENTAL BRIEF FILED TO DIV
05/14/1997	RESPONSE SUPPLEMENTAL BRIEF FILED TO DIV
05/14/1997	MOTION OR REQUEST AMICUS BRIEF FILED PLANNED PARENTHOOD & CENTER FOR REPRODUCTIVE LAW

DATE	PROCEEDINGS
05/14/1997	AMICUS BRIEF FILED PLANNED PARENTHOOD & CENTER FOR REPRODUCTIVE LAW
05/15/1997	MOTION OR REQUEST AMICUS BRIEF FILED CITY OF BOULDER-COPY TO DIVISION-TO EGR
05/15/1997	AMICUS BRIEF FILED CITY OF BOULDER-COPIES TO DIVISION
05/16/1997	ORDER AMICUS BRIEF GRANTED
6/03/1997	ORDER AMICUS BRIEF GRANTED CITY OF BOULDER
06/26/1997	OPINION AFFIRMED OPINION ANNOUNCED Published: Y P2nd Cite: ___ P.2d: ___ EGR ALS SIR CONCUR CONCUR
06/26/1997	MANDATE DUE
07/10/1997	PETITION FOR REHEARING filed
07/24/1997	MANDATE DUE 08/25/1997
07/24/1997	PETITION FOR REHEARING DENIED DIV V
09/29/97	MANDATE ISSUED
09/29/1997	LOWER COURT RECORD RETURNED 3 VOLS
10/02/1997	PET/WRIT OF CERT RECEIVED 97SC630
10/02/1997	MANDATE RECALL OF MANDATE ISSUED CERT LIST SHOWED THIS # AS A DIST. CT. INCORRECTLY
	***
02/16/1999	OPINION RECEIVED 97SC630

DATE	PROCEEDINGS
03/10/1999	MANDATE RECEIVED 97SC630
	***
03/25/1999	MANDATE ISSUED
	***

III. SUPREME COURT OF COLORADO, No. 95SC593
(For clarity and brevity, pursuant to Supreme Court Rule 26.5, formal matters, including computer docketing codes, have been omitted)

Date	Proceedings
1995	
Sept. 15	Petition for Writ of Certiorari filed. *Opposition DUE: 9/28/95.
	***
Sept. 25	Court of Appeals original flat file; briefs & 3 volumes of records filed.
Sept. 28	Brief in Opposition to Petition for Writ of Certiorari filed. *Reply DUE: 10/6/95.
Oct. 06	Reply Brief in Support of Petition for Writ of Certiorari filed.
Oct. 13	Supplemental Authority for Brief in Opposition to Petition for Writ of Certiorari filed.
Nov. 13	Second Supplemental Authority for Brief in Opposition to Petition for Writ of Certiorari filed.
Nov. 30	Submitted
1996	
Feb. 26	ORDER - Petn. for Writ of Cert. DENIED, EN BANC.
Feb. 26	Returned to C/A w/rr: Original Flat File and 3 Volumes of Record

Date	Proceedings
Feb. 26	CASE CLOSED.
Feb. 26	Receipt Returned

IV. SUPREME COURT OF COLORADO, No. 97SC630
(For clarity and brevity, pursuant to Supreme Court Rule 26.5, formal matters, including computer docketing codes have been omitted)

Date	Proceedings
1997	
Aug. 15	Petition for Writ of Certiorari filed. *Opposition DUE: 8/28/97
	***
Aug. 28	Brief in Opposition to Petition for Writ of Certiorari filed. *Reply DUE: 9/05/97
	***
Sept. 08	Reply Brief in Support of Petition for Writ of Certiorari filed.
Nov. 18	Submitted
1998	
Jan. 12	ORDER - Petn. for Writ of Cert. GRANTED, EN BANC. (See Flat File for issue.) *Opening Brief DUE
Jan. 28	Court of Appeals Original Flat file and 3 Volumes of Records filed.
Feb. 19	Opening Brief filed. *Answer Brief DUE: 3/24/98

Date	Proceedings
Mar. 24	Motion for Leave of Court to File Brief of Amici Cur. Planned Parenthood of the Rocky Mountains, Inc., The Center for Reproductive Law & Policy, Inc., and the City of Boulder, Colorado filed. (Brief tendered)
Mar. 24	Answer Brief filed. *Reply Brief DUE: 4/10/98
April 8	ORDER - Motion for Leave of Court to File Brief of Amici Curiae Planned Parenthood of the Rocky Mountains, Inc., The Center for Reporductive Law & Policy, Inc., and the City of Boulder, Colorado, GRANTED.
April 08	Brief of Amici Curiae Planned Parenthood of the Rocky Mountains, Inc., The Center for Reporductive Law & Policy, Inc., and the City of Boulder, Colorado, filed.
April 09	Reply Brief filed.
Apr. 15	Request for Oral Argument filed.
	***
Apr. 29	***
	*Reply to Amici DUE: 5/15/98
May 14	Petitioners' Reply to Brief Amici Curiae of Planned Parenthood of the Rocky Mountains, Inc., the Center for Reproductive Law & Policy, Inc., and the City of Boulder, Colorado filed.
	***
Aug. 10	Set for Oral Argument on Monday, October 19, 1998 @ 10:00 a.m. Overland High School.

Date	Proceedings
Aug. 17	CORRECTED ORDER Oral Argument Order had Incorrect date, Order on docket sheet is correct
	***
Oct. 06	Petitioners' Citation of Supplemental Authority filed.
Oct. 19	Orally Argued and Submitted. EN BANC.
Oct. 28	Respondent's Motion for Leave to provide Citations filed.
Nov. 09	ORDER - Respondents' Motion for Leave to Provide Citations GRANTED. (Oct. 09)
Nov. 09	CORRECTED ORDER - Respondent's Motion for Leave to Provide Citations GRANTED. (date on order was incorrect)
1999	
Feb. 16	Judgment affirmed, En Banc. Scott, J.
	***
Mar 10	MANDATE issued.
Mar 10	3 Volumes of Record and Original Flat File returned to COA w/rr.
	***
Mar 10	CASE CLOSED.
May 24	Received Letter From U.S. Supreme Court re: Filing of Petition of Certiorari on 5/17/99 - case number 98-1856. (filed.)
Aug. 19	Letter received from US Supreme Court requesting transmittal of record received.
Aug 19	Certified Copy of Court of Appeals Record received
Aug 23	Three Volumes of Record from Jeffco received.

Date	Proceedings
Aug. 23	Copies of Supreme Court record, Court of Appeals record (1 vol. each), and three volumes of original record from Jefferson District Court sent to U.S. Supreme Court per their request. w/rr
Sep 01	Mailed 1 original cassette of oral argument on Oct. 19, 1998 to US Supreme Court. per their request. w/rr
Sept. 07	Received return receipt for CO Supreme Court file, COA and District Court files.

VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT, INJUNCTIVE RELIEF, COSTS AND ATTORNEYS FEES, AND ACCELERATION UNDER C.R.C.P. RULE 65

INTRODUCTION

1. This is a civil rights action, under state and federal law, challenging a newly-enacted Colorado statute which creates "speech-free bubble zones" around people using the public ways within 100 feet of any "health care facility." This action is brought by the above-named individuals to obtain a declaratory judgment that the challenged statute violates well-recognized rights, including the rights to freedom of speech, press, and assembly, the right to due process, and the right to equal protection of the law, which rights are secured by the first and fourteenth amendments of the United States Constitution and by art. II, §§ 3, 4, 10, and 25 of the Colorado State Constitution. Plaintiffs also seek preliminary and permanent injunctive relief to prevent the Defendants, and persons acting in concert with them, from enforcing the challenged statute in

a manner inconsistent with the constitutional rights of the plaintiffs.

VENUE AND JURISDICTION

2. For the relief that Plaintiffs seek, this Court is the appropriate court of general jurisdiction, according to the Colorado Constitution, Art. 6, § 9.

3. The District Court, Jefferson County, Colorado, is the appropriate venue for this action.

4. This action arises under the United States Constitution, particularly the First and Fourteenth Amendments, under Federal law, particularly 42 U.S.C.A. §§ 1983 and 1988. This case also arises under state law, particularly the Uniform Declaratory Judgments Act, C.R.S. § 13-51-101, et seq.

5. This Court has jurisdiction to hear and grant:

a. Plaintiffs' prayer for declaratory relief under C.R.S. § 13-51-101, et seq., the Uniform Declaratory Judgments Act;

b. Plaintiffs' prayer for relief on their substantive federal civil rights claims under Title 42 U.S.C. § 1983, which jurisdiction is concurrent with the federal courts;

c. Plaintiffs' prayer for injunctive relief under Rule 65 of the Colorado Rules of Civil Procedure; and,

d. Plaintiffs' prayer for an award of the costs of litigation, including a reasonable award of attorneys fees, pursuant to 42 U.S.C.A. § 1988.

PARTIES

6. Plaintiff Leila Jeanne Hill is a citizen of the United States and a resident of Colorado.

7. Plaintiff Audrey Himmelmann is a citizen of the United States and a resident of Colorado.

8. Plaintiff Everitt W. Simpson, Jr. is a citizen of the United States and a resident of Colorado.

9. Defendant David J. Thomas is sued in his official

capacity as District Attorney for the First Judicial District of the State of Colorado, within which are located both Jefferson County and the City of Lakewood. The District Attorney for the First Judicial District is the chief law enforcement of nicer thereof and is charged with the duty and responsibility of enforcing the criminal laws of the State of Colorado, by and through the prosecution of criminal charges alleging the violation of state laws.

10. Defendant City of Lakewood, Colorado, is a municipal corporation existing under the laws and Constitution of the State of Colorado and is a corporate entity capable of suing and being sued. The Defendant City maintains and operates the Lakewood Police Department, which police department would, in the first instance, be responsible for the detention, arrest, and referral for prosecution, of persons alleged to have violated laws and ordinances within the corporate limits of the City of Lakewood, Colorado.

11. Defendant Gale A. Norton is sued in her official capacity as Attorney General of the State of Colorado. The Attorney General of Colorado is the chief law enforcement officer for the State of Colorado.

12. Defendant State of Colorado is a sovereign governmental entity existing under the laws and Constitution of the United States and of the State of Colorado. It was the exercise of legislative power by the State of Colorado, in the enactment of new code § 18-9-122 of the Colorado Revised Statutes, which led to the filing of the instant action. Defendant State of Colorado is the governmental body responsible for the enforcement of state statutes.

ALLEGATIONS OF FACT

13. On April 19, 1993, the Honorable Roy Romer, Governor of the State of Colorado, signed into effect legislation

denominated House Bill 93-1209.

14. House Bill 93-1209 took effect, by its own terms, "upon passage." Said legislation created, inter alia, a new section of the Colorado Revised Statutes, § 18-9-122.

15. Section 18-9-122(3) provides as follows:

> No person shall knowingly approach another person within eight feet of such person, unless such other person consents, for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education, or counseling with such other person in the public way or sidewalk area within a radius of one hundred feet from any entrance door to a health care facility. Any person who violates this subsection (3) commits a class 3 misdemeanor.

16. Each plaintiff opposes the performance of human abortion, which they understand to be the extermination of innocent human life.

17. Prior to the enactment of C.R.S. § 18-9-122(3), Plaintiffs Hill, Himmelmann and Simpson had engaged in "sidewalk counseling" on the public ways or sidewalks within 100 feet of the entrances of facilities where human abortion is practiced or where medical personnel refer women to other facilities for the commission of human abortions.

18. "Sidewalk counseling" consists of efforts to educate, counsel, persuade, or inform passersby about abortion and abortion alternatives by means of verbal or written speech, including conversation and/or display of signs and/or distribution of literature.

19. Prior to enactment of C.R. S. § 18-9-122, each plaintiff had publicly expressed that opposition to abortion, as well as the availability of humane alternatives to the termination of human beings by abortion, by engaging in sidewalk counselling and public protest on the public ways or sidewalks with 100

feet of the entrances of facilities where human abortions are committed. or where medical personnel refer women to other facilities for the commission of human abortions.

20. In the past, each plaintiff has engaged in leafletting, handbilling, displaying signs, or oral protesting, educating, or counseling with members of the body politic that pass within their vicinity while they were within 100 feet of the entrances of facilities where human abortion is committed or where medical personnel refer women to other facilities for the commission of human abortions.

21. The activities described in paragraphs 17 through 20 (hereafter, "said activities") frequently entail being within eight feet of other persons.

22. Each of the Plaintiffs plans, desires and wishes to continue engaging in said activities.

23. On July 2, 1993, Roger W. Noonan, Esq., City Attorney for the City of Lakewood, Colorado, corresponded with Plaintiff Everitt Simpson by letter.

24. By letter, City Attorney Noonan declared, "The Lakewood Police Department has been advised of the provisions of this new statute and is prepared to enforce its terms."

25. Furthermore, City Attorney Noonan stated in the July 2 letter to Plaintiff Simpson that "violations of this new statute will be instead prosecuted by the Office of the District Attorney, First Judicial District, 1726 Cole Boulevard, Building 22, Suite 300, Golden, Colorado, 80401."

26. Plaintiffs fear that engaging in said activities will subject them to arrest and criminal prosecution under § 18-9-122(3).

27. The fear of potential criminal prosecution under § 18-9-122(3) has caused plaintiffs to be chilled in the exercise of

fundamental constitutional rights.

28. The Lakewood Police Department of the City of Lakewood, Colorado, upon information and belief, is aware of the enactment of new section 18-9-122 and, upon information and belief, will enforce said provision through arrest and criminal process when Plaintiffs engage in their protected speech, press, and assembly activities.

29. Unless and until defendants are restrained by order of this Court, defendants or their agents or deputies intend to enforce § 18-9-122(3).

30. Unless and until this court restrains enforcement or declares § 18-9-122(3) unconstitutional, defendant State of Colorado will continue to enforce said new section.

ALLEGATIONS OF LAW

31. Each and all of the acts of the Defendants, their officers, agents and employees, as alleged herein, were done or are threatened to be done by the Defendants, not as individuals, but under the color and pretense of the statutes, ordinances, regulations, customs, and uses of the State of Colorado.

32. Plaintiffs are suffering irreparable injury from the threat of criminal and civil enforcement of § 18-9-122(3).

33. Unless and until the threat of criminal and civil liability, which has arisen by reason of the enactment of § 18-9-122(1) is lifted, Plaintiffs will continue to suffer irreparable injury.

34. By operation of federal law, § 18-9-122(3) does not apply to labor activities.

35. By operation of Colorado law, § 18-9-122(3) does not apply to labor activities.

FIRST CAUSE OF ACTION
VIOLATION OF THE RIGHT TO FREEDOM
OF SPEECH UNDER THE CONSTITUTION
OF THE STATE OF COLORADO
(By All Plaintiffs)
(Against All Defendants)

36. Plaintiffs reallege paragraphs 1-35, supra, and incorporate them herein.

37. Section 18-9-122(1) restrains speech before its utterance.

38. Section 18-9-122(3) is an unconstitutional abridgement on its face, and as applied or threatened to be applied, of the Plaintiffs' affirmative rights to freedom of speech under the Colorado Constitution, Art. II, § 10, in that it imposes a prior restraint on constitutionally protected speech, including hand-to-hand distribution of literature, displays of signs, and/or oral protest, education and counseling, on public ways and sidewalks.

39. Such a system of prior restraints is unconstitutional because it lacks adequate procedural safeguards necessary to validate an otherwise unconstitutional statute, in that the statute does not impose a time deadline within which consent must be given and the statute provides absolutely no means by which decisions to deny consent are subjected to judicial review to determine the constitutionality of any decision to deny or revoke consent.

40. Section 18-9-122(3) imposes an impermissibly burdensome requirement that Plaintiffs receive permission from each and every person who passes within eight feet of them while they engage in the distribution of literature, the display of signs, or oral protest, education or counseling on the public ways and sidewalks within 100 feet of the entrances of the

abortion businesses where Plaintiffs conducted their free speech activities in the past, and where they plan to continue those activities in the fixture.

41. The public streets and sidewalks within 100 feet of the entrances to medical facilities are part of the traditional public forum, within which the right of the government to regulate speech is narrow and well-defined. Section 18-9-122(3) fails scrutiny as unjustifiably burdensome restriction on speech and press in the traditional public forum.

42. No compelling government interest exists to justify § 18-9-122(3). The provisions of § 18-9-122(3) are not the least restrictive means to accomplish any permissible government purpose sought to be served by the legislation.

43. New section 18-9-122 impermissibly elevates the heckler's veto from its constitutional status as a natural though regrettable attendant to the right to free expression, making such heckler's veto effectively the law with respect to the right to speak at a particular place and time.

44. Section 18-9-122(3) is a content-based restrictions on speech. The restriction on oral protest, education and counseling is an explicit requirement that the content of proposed speech be examined in advance of its occurrence and that the restrictions, if any, which the statutes imposes, flow from the conclusion that the speech constitutes oral protest, counseling and education. Furthermore, § 18-9-122(3) is a viewpoint-based restriction on speech because the statute, as written, makes it likely that prosecution will occur based on displeasure with the position taken by the speaker.

45. Section 18-9-122(3) is unconstitutionally overbroad restriction on expressive activity, on its face and as applied and construed, in violation of the right to free speech under the Colorado Constitution, Art. 2, § 10.

WHEREFORE Plaintiffs respectfully pray that the Court grant the declaratory and injunctive relief set forth hereinafter in the prayer for relief.

SECOND CAUSE OF ACTION
VIOLATION OF THE RIGHT TO
FREEDOM OF THE PRESS UNDER
THE COLORADO CONSTITUTION
(By All Plaintiffs)
(Against All Defendants)

46. Plaintiffs reallege paragraphs 1-45, supra, and incorporate them herein.

47. The distribution of written materials is a classic example of the exercise of the right to freedom of the press.

48. No compelling government interest exists to justify the restrictions imposed on such an exercise of the freedom of the press in these circumstances. Nor is the restriction the least restrictive means available to serve any permissible government purpose intended to be served by the statute.

49. New section 18-9-122 imposes a svstem of prior restraints on the publication and/or circulation of printed materials. The system of prior restraints is an unconstitutional violation of the right to freedom of the press under the Colorado Constitution, Art. 2, § 10, because it lacks adequate procedural safeguards required in such circumstances and because it extends unbridled discretion to the decision-maker.

WHEREFORE Plaintiffs respectfully pray that the Court grant the declaratory and injunctive relief set forth hereinafter in the prayer for relief.

THIRD CAUSE OF ACTION
VIOLATION OF THE DUE PROCESS CLAUSE OF
THE COLORADO CONSTITUTION
(By All Plaintiffs)

(Against All Defendants)

50. Plaintiffs reallege paragraphs 1-50, supra, and incorporate them herein.

51. Section 18-9-122(3) fails to adequately advise, notify or inform persons threatened with possible prosecution for its violation of its requirements.

52. Because § 18-9-122(3) fails to adequately advise persons subject to prosecution under it of the obligations it creates, it is unconstitutionally vague, on its face and as applied and construed, in violation of the due process clause of the Colorado Constitution, Art. 2, § 25.

53. Section 18-9-122(3) is an irrational and unreasonable statute, which imposes irrational and unjustifiable restrictions on the pristine exercise of protected constitutional rights. Because it is irrational and unreasonable, its application violates the due process clause of the Colorado Constitution, Art. 2, § 25.

WHEREFORE Plaintiffs respectfully pray that the Court grant the declaratory and injunctive relief set forth hereinafter in the prayer for relief.

FOURTH CAUSE OF ACTION
VIOLATION OF THE IMPLIED EQUAL PROTECTION
CLAUSE OF THE COLORADO CONSTITUTION
(By All Plaintiffs)
(Against All Defendants)

54. Plaintiffs reallege paragraphs 1-53, supra, and incorporate them herein.

55. Section 18-9-122(3) violates the rights of Plaintiffs to enjoy equal protection of the laws, a right guaranteed implicitly by the Colorado Constitution, Art. II, § 25, in that the statute subjects the sidewalk counselling and other expressive activities of the Plaintiffs to burdens different from, and in

excess of, those imposed on persons engaged in labor-related picketing activities.

WHEREFORE Plaintiffs respectfully pray that the Court grant the declaratory and injunctive relief set forth hereinafter in the prayer for relief.

FIFTH CAUSE OF ACTION
VIOLATION OF THE RIGHT TO FREEDOM OF SPEECH
UNDER THE UNITED STATES CONSTITUTION
(By All Plaintiffs)
(Against All Defendants)

56. Plaintiffs reallege paragraphs 1-55, supra, and incorporate them herein.

57. Section 18-9-122(3) restrains speech before its utterance.

58. Section 18-9-122(3) is an unconstitutional abridgement on its face, and as applied or threatened to be applied, of the Plaintiffs' affirmative rights to freedom of speech under the United States Constitution, amend. I and XIV, in that § 18-9-122(3) imposes a prior restraint on constitutionally protected speech, including hand-to-hand distribution of literature, displays of signs, and/or oral protest, education and counseling, on public ways and sidewalks.

59. Such a system of prior restraints is unconstitutional because it lacks adequate procedural safeguards necessary to validate an otherwise unconstitutional statute, in that the statute does not impose a time deadline within which consent must be given and the statute provides absolutely no means by which decisions to deny consent are subjected to judicial review to determine the constitutionality of any decision to deny or revoke consent.

60. Section 18-9-122(3) imposes an impermissibly burdensome requirement that Plaintiffs receive permission from

each and every person who passes within eight feet of them while they engage in the distribution of literature, the display of signs, or oral protest, education or counseling on the public ways and sidewalks within 100 feet of the entrances of the abortion businesses where Plaintiffs conducted their free speech activities in the past, and where they plan to continue those activities in the fixture.

61. The public streets and sidewalks within 100 feet of the entrances to medical facilities are part of the traditional public forum, within which the right of the government to regulate speech is narrow and well-defined. Section 18-9-122(3) is an irrational and unreasonable statute, which imposes irrational and unjustifiable restrictions on the pristine exercise of protected constitutional rights. No compelling government interest exists to justify the statute. The provisions of § 18-9-122(3) are not the least restrictive means to accomplish any permissible government purpose sought to be served by the legislation.

62. New section 18-9-122 impermissibly elevates the heckler's veto from its constitutional status as a natural though regrettable attendant to the right to free expression, making such heckler's veto effectively the law with respect to the right to speak at a particular place and time.

63. Section 18-9-122(3) is a content-based restriction on speech. The restriction on oral protest, education and counseling is an explicit requirement that the content of proposed speech be examined in advance of its occurrence and that the restrictions, if any, which the statutes imposes, flow from the conclusion that the speech constitutes oral protest, counseling and education. Furthermore, § 18-9-122(3) is a viewpoint-based restriction on speech; the statute, as written, makes it likely that prosecution will occur based on displeasure

with the position taken by the speaker.

64. Section 18-9-122(3) is unconstitutionally overbroad restriction on expressive activity, on its face and as applied and construed, in violation of the right to free speech under the United States Constitution, amend. I and XIV.

WHEREFORE Plaintiffs respectfully pray that the Court grant the declaratory and injunctive relief set forth hereinafter in the prayer for relief.

SIXTH CAUSE OF ACTION
VIOLATION OF THE RIGHT TO
FREEDOM OF THE PRESS
UNDER THE UNITED STATES CONSTITUTION
(By All Plaintiffs)
(Against All Defendants)

65. Plaintiffs reallege paragraphs 1 -64, supra, and incorporate them herein.

66. The distribution of written materials is a classic example of the exercise of the right to freedom of the press.

67. No compelling government interest exists to justify the restrictions imposed on such an exercise of the freedom of the press in these circumstances. Nor is the restriction the least restrictive means available to serve any permissible government purpose intended to be served by the statute.

68. New section 18-9-122 imposes a system of prior restraints on the publication and/or circulation of printed materials. The system of prior restraints is unconstitutional under the United States Constitution, amend. I and XIV, because it lacks adequate procedural safeguards required in such circumstances and because it extends unbridled discretion to the decision-maker.

WHEREFORE Plaintiffs respectfully pray that the Court grant the declaratory and injunctive relief set forth hereinafter

in the prayer for relief.

SEVENTH CAUSE OF ACTION
VIOLATION OF THE RIGHT TO PEACEABLE ASSEMBLY
UNDER THE UNITED STATES CONSTITUTION
(By All Plaintiffs)
(Against All Defendants)

69. Plaintiffs reallege paragraphs 1 -68, supra, and incorporate them herein.

70. The public streets and sidewalks in the City of Lakewood, Colorado, and in Jefferson County, Colorado, including those streets and sidewalks within 100 feet of the entrances to medical facilities, are traditional public forum properties.

71. Plaintiffs' displays of signs, distribution of literature, and oral protest, counseling and education, are efforts to effect change in the current policy of the United States with respect to the commission of human abortions.

72. The right to peaceable assembly includes and protects the right of Plaintiffs, as members of the body politic, to engage in peaceful advocacy in support of, or in opposition to, the policies of the governments of the United States and of Colorado.

73. Section 18-9-122(3) unconstitutionally chills and abridges, on its face and as applied and construed, the rights of the Plaintiffs to peaceably assemble, which right is guaranteed by the United States Constitution, amend. I and XIV.

WHEREFORE Plaintiffs respectfully pray that the Court grant the declaratory and injunctive relief set forth hereinafter in the prayer for relief.

EIGHTH CAUSE OF ACTION
VIOLATION OF THE DUE PROCESS CLAUSE

OF THE CONSTITUTION OF THE UNITED STATES
(By All Plaintiffs)
(Against All Defendants)

74. Plaintiffs reallege paragraphs 1-73, supra, and incorporate them herein.

75. Section 18-9-122(3) fails to adequately advise, notify or inform persons threatened with possible prosecution for its violation of its requirements.

76. Because § 18-9-122(3) fails to adequately advise persons subject to prosecution under it of the obligations it creates, it is unconstitutionally vague, on its face and as applied and construed, in violation of the due process guarantee of the United States Constitution, U.S. Const. amend. XIV.

77. Section 18-9-122(3) is an irrational and unreasonable statute, which imposes irrational and unjustifiable restrictions on the pristine exercise of protected constitutional rights. Because it is irrational and unreasonable, its application violates the due process clause of the United States Constitution, amend. XIV.

WHEREFORE Plaintiffs respectfully pray that the Court grant the declaratory and injunctive relief set forth hereinafter in the prayer for relief.

NINTH CAUSE OF ACTION
VIOLATION OF THE EQUAL PROTECTION CLAUSE
OF THE UNITED STATES CONSTITUTION
(By All Plaintiffs)
(Against All Defendants)

78. Plaintiffs reallege paragraphs 1-78, supra, and incorporate them herein.

79. Section 18-9-122(3) violates the rights of Plaintiffs to equal protection of the laws, a right guaranteed implicitly by the United States Constitution amend. XIV, in that the statute

subjects the sidewalk counselling and other expressive activities of the Plaintiffs to burdens different ftom, and in excess of, those imposed on persons engaged in labor-related picketing activities.

WHEREFORE Plaintiffs respectfully pray that the Court grant the declaratory and injunctive relief set forth hereinafter in the prayer for relief.

PRAYER FOR RELIEF

Wherefore Plaintiffs respectfully pray that the Court:

a. Declare that § 18-9-122(3) is unconstitutional on its face because it violates the rights to freedom of speech, press and assembly, and the rights to due process and equal protection, all guaranteed to the Plaintiffs under the Constitution of the United States;

b. Declare that § 18-9-122(3) is unconstitutional on its face because it violates the rights to freedom of speech, press and assembly, and the rights to due process and equal protection, all guaranteed to the Plaintiffs under the Colorado Constitution;

c. Declare that § 18-9-122(3) is unconstitutional as threatened to be applied to the activities of Plaintiffs, described in paragraphs 16-20 of the Verified Complaint, because it violates the Plaintiffs' rights to freedom of speech, press and assembly, and the Plaintiffs' rights to due process and equal protection, all guaranteed to the Plaintiffs under the Constitution of the United States;

d. Declare that § 18-9-122(3) is unconstitutional as threatened to be applied to the activities of Plaintiffs, described in paragraphs 16-20 of the Verified Complaint, because it violates the Plaintiffs' rights to freedom of speech, press and assembly, and the Plaintiffs' rights to due process and equal protection, all guaranteed to the Plaintiffs under the Colorado Constitution;

e. Enjoin the Defendants, their agents, servants, employees, and attorneys, and those in active concert with them, from enforcing the provisions of § 18-9-122(1) against the Plaintiffs for their participation in the activities described in paragraphs 16-20 of the Verified Complaint;

f. Grant to Plaintiffs an award of their costs of litigation, including reasonable attorney fees and expenses; and,

g. Grant such other and further relief as this Court deems just and proper.

ANSWER OF DEFENDANTS STATE OF COLORADO AND GALE A. NORTON

Defendants Gale A. Norton, in her official capacity as Attorney General for the State of Colorado, and the State of Colorado, Roy Romer, Governor ("State") hereby answer the Verified Complaint as follows:

INTRODUCTION

1. The State admits that Plaintiffs challenge the constitutionality of a state statute and seek declaratory and injunctive relief. The State denies the remaining allegations in paragraph 1 of the Verified Complaint.

VENUE AND JURISDICTION

2. The State admits the allegations in paragraph 2 of the Verified Complaint.

3. The State admits the allegations in paragraph 3 of the Verified Complaint.

4. The State admits the allegations in paragraph 4 of the Verified Complaint.

5. The State admits the allegations in paragraph 5 of the Verified Complaint.

PARTIES

6. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 6 of the Verified Complaint, and therefore denies the same.

7. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 7 of the Verified Complaint, and therefore denies the same.

8. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 8 of the Verified Complaint, and therefore denies the same.

9. The State admits that David J. Thomas is sued in his official capacity as District Attorney for the First Judicial District of the State of Colorado, within which are located the City of Lakewood and Jefferson County, and that the District Attorney has authority to prosecute criminal charges alleging violation of state laws. The State denies the remaining allegations in paragraph 9 of the Verified Complaint.

10. The State admits the allegations in paragraph 10 of the Verified Complaint.

11. The State admits that Gale A. Norton is sued in her official capacity as Attorney General of the State of Colorado, but denies the remaining allegations in paragraph 11 of the Verified Complaint. The State affirmatively states that the Attorney General is legal counsel and advisor for each department, division, board, bureau, and agency of state government other than the legislative branch.

12. The State admits that the State of Colorado is a sovereign governmental entity existing under the laws and Constitutions of the United States and of the State of Colorado. The State is without knowledge or information sufficient to form a belief as to the truth of the second sentence of paragraph 12 of the Verified Complaint, and therefore denies the same. The State denies the third sentence of paragraph 12 of the

Verified Complaint, and affirmatively states that district attorneys are authorized to prosecute criminal charges in district court alleging violations of state laws.

ALLEGATIONS OF FACT

13. The State admits the allegations in paragraph 13 of the Verified Complaint.

14. The State admits the allegations in paragraph 14 of the Verified Complaint.

15. The State admits the allegations in paragraph 15 of the Verified Complaint.

16. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 16 of the Verified Complaint, and therefore denies the same.

17. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 of the Verified Complaint, and therefore denies the same.

18. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 18 of the Verified Complaint, and therefore denies the same.

19. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 19 of the Verified Complaint, and therefore denies the same.

20. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 20 of the Verified Complaint, and therefore denies the same.

21. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations in

paragraph 21 of the Verified Complaint, and therefore denies the same.

22. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 22 of the Verified Complaint, and therefore denies the same.

23. The State admits the allegations in paragraph 23 of the Verified Complaint.

24. The State admits the allegations in paragraph 24 of the Verified Complaint.

25. The State admits the allegations in paragraph 25 of the Verified Complaint.

26. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 26 of the Verified Complaint, and therefore denies the same.

27. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 27 of the Verified Complaint, and therefore denies the same. The State further denies that section 18-9-122(3), C.R.S. has any chilling effect on the exercise of fundamental constitutional rights.

28. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 28 of the Verified Complaint, and therefore denies the same.

29. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 29 of the Verified Complaint, and therefore denies the same.

30. The State denies the allegations in paragraph 30 of the Verified Complaint and affirmatively states that district at-

torneys are authorized to prosecute criminal charges in district court alleging violations of state laws.

ALLEGATIONS OF LAW

31. The State admits that it is acting under state law, but denies that it has taken any action or threatened any action against Plaintiffs.

32. The State denies the allegations in paragraph 32 of the Verified Complaint.

33. The State denies the allegations in paragraph 33 of the Verified Complaint.

34. The State denies the allegations in paragraph 34 of the Verified Complaint, and states that the allegations are so vague that the State is without knowledge or information sufficient to form a belief as to the truth of said allegations.

35. The State denies the allegations in paragraph 35 of the Verified Complaint, and states that the allegations are so vague that the State is without knowledge or information sufficient to form a belief as to the truth of said allegations.

FIRST CAUSE OF ACTION

36. In response to the reallegations contained in paragraph 36 of the Verified Complaint, the State incorporates by reference its individual responses to the original allegations.

37. The State denies the allegations in paragraph 37 of the Verified Complaint.

38. The State denies the allegations in paragraph 38 of the Verified Complaint.

39. The State admits that section 18-9-122(3) requires consent, under narrowly defined circumstance, from the person who is the target of speech, and sets no time deadline for that consent. The State denies the remaining allegations in paragraph 39 of the Verified Complaint, and affirmatively states that there is no constitutionally protected right to force

speech upon an unwilling listener. The State further affirmatively states that judicial review is available should a statute be enforced unconstitutionally.

40. The State denies the allegations in paragraph 40 of the Verified Complaint, and affirmatively states that section 18-9-122(3) is a reasonable time, place and manner regulation of expressive activity.

41. The State denies the allegations in paragraph 41 of the Verified Complaint, and affirmatively states that section 18-9-122(3) leaves open ample alternative means of communication for expressive activities.

42. The State denies the allegations in paragraph 42 of the Verified Complaint, and affirmatively states that section 18-9-122(3) is narrowly tailored to serve a significant government interest.

43. The State denies the allegations in paragraph 43 of the Verified Complaint, and affirmatively states that there is no constitutionally protected right to force speech upon an unwilling listener.

44. The State denies the allegations in paragraph 44 of the Verified Complaint, and affirmatively states that section 18-9-122(3) is content-neutral.

45. The State denies the allegations in paragraph 45 of the Verified Complaint, and affirmatively states that section 18-9-122(3) has not been applied to Plaintiffs to date.

SECOND CAUSE OF ACTION

46. In response to the reallegations contained in paragraph 46 of the Verified Complaint, the State incorporates by reference its individual responses to the original allegations.

47. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 47 of the Verified Complaint, and therefore denies

the same.

48. The State denies the allegations in paragraph 48 of the Verified Complaint, and affirmatively states that section 18-9-122(3) is narrowly tailored to serve a significant government interest.

49. The state denies the allegations in paragraph 49 of the Verified Complaint, and affirmatively states that section 18-9-122(3) protects private individuals from having messages forced upon them against their wishes.

THIRD CAUSE OF ACTION

50. In response to the reallegations contained in paragraph 50 of the Verified Complaint, the State incorporates by reference its individual responses to the original allegations.

51. The State denies the allegations in paragraph 51 of the Verified Complaint.

52. The State denies the allegations in paragraph 52 of the Verified Complaint.

53. The State denies the allegations in paragraph 53 of the Verified Complaint.

FOURTH CAUSE OF ACTION

54. In response to the reallegations contained in paragraph 54 of the Verified Complaint, the State incorporates by reference its individual responses to the original allegations.

55. The State denies the allegations in paragraph 55 of the Verified Complaint as a matter of law, and further states that the allegations contained in that paragraph are so vague that the State lacks sufficient knowledge or information to form a belief as to the truth of the allegations.

FIFTH CAUSE OF ACTION

56. In response to the reallegations contained in paragraph 56 of the Verified Complaint, the State incorporates by reference its individual responses to the original allegations.

57. The State denies the allegations in paragraph 57 of the Verified Complaint.

58. The State denies the allegations in paragraph 58 of the Verified Complaint.

59. The State admits that section 18-9-122(3) requires consent, under narrowly defined circumstance, from the person who is the target of speech, and sets no time deadline for that consent. The State denies the remaining allegations in paragraph 59 of the Verified Complaint, and affirmatively states that there is no constitutionally protected right to force speech upon an unwilling listener. The State further affirmatively states that judicial review is available should a statute be enforced unconstitutionally.

60. The State denies the allegations in paragraph 50 of the Verified Complaint, and affirmatively states that section 18-9-122(3) is a reasonable time, place and manner regulation of expressive activity.

61. The State denies the allegations in paragraph 61 of the Verified Complaint, and affirmatively states that section 18-9-122(3) leaves open ample alternative means of communication for expressive activities, and is narrowly tailored to serve a significant government interest.

62. The State denies the allegations in paragraph 62 of the Verified Complaint, and affirmatively states that there is no constitutionally protected right to force speech upon an unwilling listener.

63. The State denies the allegations in paragraph 63 of the Verified Complaint, and affirmatively states that section 18-9-122(3) is content-neutral.

64. The State denies the allegations in paragraph 64 of the Verified Complaint, and affirmatively states that section 18-9-122(3) has not been applied to Plaintiffs to date.

SIXTH CAUSE OF ACTION

65. In response to the reallegations contained in paragraph 65 of the Verified Complaint, the State incorporates by reference its individual responses to the original allegations.

66. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 66 of the Verified Complaint, and therefore denies the same.

67. The State denies the allegations in paragraph 67 of the Verified Complaint, and affirmatively states that section 18-9-122(3) is narrowly tailored to serve a significant government interest.

68. The State denies the allegations in paragraph 68 of the Verified Complaint, and affirmatively states that section 18-9-122(3) protects private individuals from having messages forced upon them against their wishes.

SEVENTH CAUSE OF ACTION

69. In response to the reallegations contained in paragraph 69 of the Verified Complaint, the State incorporates by reference its individual responses to the original allegations.

70. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 70 of the Verified Complaint, and therefore denies the same.

71. The State is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 71 of the Verified Complaint, and therefore denies the same.

72. The State admits that the people have the right peaceably to assemble, subject to reasonable time, place and manner regulations, and denies the remaining allegations in paragraph 72 of the Verified Complaint.

73. The State denies the allegations in paragraph 73 of the Verified Complaint.

EIGHTH CAUSE OF ACTION

74. In response to the reallegations contained in paragraph 74 of the Verified Complaint, the State incorporates by reference its individual responses to the original allegations.

75. The State denies the allegations in paragraph 75 of the Verified Complaint.

76. The State denies the allegations in paragraph 76 of the Verified Complaint.

77. The State denies the allegations in paragraph 77 of the Verified Complaint.

NINTH CAUSE OF ACTION

78. In response to the reallegations contained in paragraph 78 of the Verified Complaint, the State incorporates by reference its individual responses to the original allegations.

79. The State denies the allegations in paragraph 79 of the Verified Complaint as a matter of law, and further states that the allegations contained in that paragraph are so vague that the State lacks sufficient knowledge or information to form a belief as to the truth of the allegations.

WHEREFORE, for the reasons set forth above, Defendants Gale A. Norton, in her official capacity as Attorney General for the State of Colorado, and the State of Colorado, Roy Romer, Governor, respectfully request that the Court:

(1) Enter judgment in favor of the State;

(2) Award the State its costs and reasonable attorneys fees incurred in this matter; and

(3) Award the State such other relief as the Court deems just and proper.

ANSWER OF DEFENDANT CITY OF LAKEWOOD

Defendant, The City of Lakewood (Lakewood), by and through its attorneys, Gorsuch, Kirgis, Campbell, Walker and Grover, answers the verified Complaint as follows:

INTRODUCTION

1. Lakewood admits that the Plaintiffs are challenging the constitutionality of a state statute and are seeking declaratory and injunctive relief.

VENUE AND JURISDICTION

2. Lakewood admits that the Court has jurisdiction over the claims in this matter.

3. Lakewood admits the allegations contained in paragraph 3 of the verified Complaint.

4. Lakewood admits the allegations contained in paragraph 4 of the Verified Complaint.

5. Lakewood admits the allegations contained in paragraph 5 of the Verified Complaint.

PARTIES

6. Lakewood is without sufficient knowledge to admit or deny the claims contained in paragraph 6 of the Verified Complaint and therefore denies the same.

7. Lakewood is without sufficient knowledge to admit or deny the claims contained in paragraph 7 of the Verified Complaint and therefore denies the same.

8. Lakewood is without sufficient knowledge to admit or deny the claims contained in paragraph 8 of the Verified Complaint and therefore denies the same.

9. In response to the allegations contained in paragraph 9 of the Verified Complaint, Lakewood admits that David J. Thomas is the District Attorney for the First Judicial District within which is located the City of Lakewood and Jefferson County, and that the District Attorney has authority to

prosecute criminal charges alleging violations of state laws. Lakewood denies the remaining allegations contained in paragraph 9 of the Verified Complaint.

10. Lakewood admits the allegations contained in paragraph 10 of the Verified Complaint.

11. Lakewood admits the allegations contained in paragraph 11 of the Verified Complaint.

12. In response to the allegations contained in paragraph 12 of the Verified Complaint, Lakewood admits that the State of Colorado is a sovereign governmental entity existing under the laws and Constitutions of the United States and Colorado with authority to enforce state statutes. As to the remaining allegations contained in paragraph 12 of the Verified Complaint, Lakewood is without sufficient knowledge to admit or deny the claims and therefore denies the same.

ALLEGATIONS OF FACT

13. Lakewood admits the allegations contained in paragraph 13 of the Verified Complaint.

14. Lakewood admits the allegations contained in paragraph 14 of the Verified Complaint.

15. Lakewood admits the allegations contained in paragraph 15 of the Verified Complaint.

16. Lakewood is without sufficient knowledge to admit or deny the claims contained in paragraph 16 of the Verified Complaint and therefore denies the same.

17. Lakewood is without sufficient knowledge to admit or deny the claims contained in paragraph 17 of the Verified Complaint and therefore denies the same.

18. Lakewood is without sufficient knowledge to admit or deny the claims contained in paragraph 18 of the Verified Complaint and therefore denies the same.

19. Lakewood is without sufficient knowledge to admit

or deny the claims contained in paragraph 19 of the Verified Complaint and therefore denies the same.

20. Lakewood is without sufficient knowledge to admit or deny the claims contained in paragraph 20 of the Verified Complaint and therefore denies the same.

21. Lakewood is without sufficient knowledge to admit or deny the claims contained in paragraph 21 of the Verified Complaint and therefore denies the same.

22. Lakewood is without sufficient knowledge to admit or deny the claims contained in paragraph 22 of the Verified Complaint and therefore denies the same.

23. Lakewood admits the allegations contained in paragraph 23 of the Verified Complaint.

24. Lakewood admits the allegations contained in paragraph 24 of the Verified Complaint.

25. In response to the allegations contained in paragraph 25 of the Verified Complaint, Lakewood admits and corrects the statement made by City Attorney Noonan in correspondence dated July 2, 1993 addressed to Everitt W. Simpson: "Violations of this new statute will instead be prosecuted by the Office of the District Attorney, First Judicial District, 1726 Cole Boulevard, Building 22, Suite 300, Golden, Colorado 80401."

26. Lakewood is without sufficient knowledge to admit or deny the claims contained in paragraph 26 of the Verified Complaint and therefore denies the same.

27. Lakewood is without sufficient knowledge to admit or deny the claims contained in paragraph 27 of the Verified Complaint and therefore denies the same.

28. In response to the allegations contained in paragraph 28 of the Verified Complaint, Lakewood admits that the Lakewood Police Department is aware of the enactment of

new section 18-9-122, Colorado Revised Statutes, and will enforce its terms. Lakewood denies the remaining allegations contained in paragraph 28 of the Verified Complaint.

29. In response to the allegations contained in paragraph 29 of the Verified Complaint, Lakewood admits only that the Lakewood Police Department intends to enforce new section 18-9-122, Colorado Revised Statutes. Lakewood denies the remaining allegations contained in paragraph 29 of the Verified Complaint.

30. Lakewood is without sufficient knowledge to admit or deny the claims contained in paragraph 30 of the Verified Complaint and therefore denies the same.

ALLEGATIONS OF LAW

31. Lakewood admits the allegations contained in paragraph 31 of the Verified Complaint.

32. Lakewood denies the allegations contained in paragraph 32 of the Verified Complaint.

33. Lakewood denies the allegations contained in paragraph 33 of the Verified Complaint.

34. Lakewood is without sufficient knowledge or information to form a belief as to the truth of allegations contained in paragraph 34 of the Verified Complaint and therefore denies the same.

35. Lakewood is without sufficient knowledge or information to form a belief as to the truth of allegations contained in paragraph 35 of the Verified Complaint and therefore denies the same.

FIRST CAUSE OF ACTION

36. Lakewood incorporates, by this reference, its responses to paragraphs 1 through 35 of the Verified Complaint.

37. Lakewood denies the allegation set forth in

paragraph 37 of the Verified Complaint.

38. Lakewood denies the allegations set forth in paragraph 38 of the Verified Complaint.

39. Lakewood denies the allegation set forth in paragraph 39 of the Verified Complaint.

40. Lakewood denies the allegation set forth in paragraph 40 of the Verified Complaint.

41. Lakewood denies the allegations set forth in paragraph 41 of the Verified Complaint.

42. Lakewood denies the allegations set forth in paragraph 42 of the Verified Complaint.

43. Lakewood is without sufficient knowledge to admit or deny the claims contained in paragraph 43 of the Verified Complaint and therefore denies the same.

44. Lakewood denies the allegations set forth in paragraph 44 of the Verified Complaint.

45. Lakewood denies the allegations set forth in paragraph 45 of the Verified Complaint.

SECOND CAUSE OF ACTION

46. Lakewood incorporates, by this reference, its responses to paragraphs 1 through 45 of the Verified Complaint.

47. Lakewood is without sufficient knowledge or information to form a belief as to the truth of allegations contained in paragraph 47 of the Verified Complaint and therefore denies the same.

48. Lakewood denies the allegations set forth in paragraph 48 of the Verified Complaint.

49. Lakewood denies the allegations set forth in paragraph 49 of the Verified Complaint.

THIRD CAUSE OF ACTION

50. Lakewood incorporates, by this reference, its

responses to paragraphs 1 through 49 of the Verified Complaint.

51. Lakewood denies the allegations set forth in paragraph 51 of the Verified Complaint.

52. Lakewood denies the allegations set forth in paragraph 52 of the Verified Complaint.

53. Lakewood denies the allegations set forth in paragraph 53 of the Verified Complaint.

FOURTH CAUSE OF ACTION

54. Lakewood incorporates, by this reference, its responses to paragraphs 1 through 53 of the Verified Complaint.

55. Lakewood is without sufficient knowledge to admit or deny the claims contained in paragraph 55 of the Verified Complaint and therefore denies the same.

FIFTH CAUSE OF ACTION

56. Lakewood incorporates, by this reference, its responses to paragraphs 1 through 55 of the Verified Complaint.

57. Lakewood denies the allegations set forth in paragraph 57 of the Verified Complaint.

58. Lakewood denies the allegation set forth in paragraph 58 of the Verified Complaint.

59. Lakewood denies the allegations set forth in paragraph 59 of the Verified Complaint.

60. Lakewood denies the allegation set forth in paragraph 60 of the Verified Complaint.

61. Lakewood denies the allegations set forth in paragraph 61 of the Verified Complaint.

62. Lakewood is without sufficient knowledge to admit or deny the claims contained in paragraph 62 of the Verified Complaint and therefore denies the same.

63. Lakewood denies the allegations set forth in paragraph 63 of the Verified Complaint.

64. Lakewood denies the allegations set forth in paragraph 64 of the Verified Complaint.

SIXTH CAUSE OF ACTION

65. Lakewood incorporates, by this reference, its responses to paragraphs 1 through 64 of the Verified Complaint.

66. Lakewood is without sufficient knowledge or information to form a belief as to the truth of allegations contained in paragraph 66 of the Verified Complaint and therefore denies the same.

67. Lakewood denies the allegations set forth in paragraph 67 of the Verified Complaint.

68. Lakewood denies the allegations set forth in paragraph 68 of the Verified Complaint.

SEVENTH CAUSE OF ACTION

69. Lakewood incorporates, by this reference, its responses to paragraphs 1 through 68 of the Verified Complaint.

70. Lakewood is without sufficient knowledge to admit or deny the claims contained in paragraph 70 of the Verified Complaint and therefore denies the same.

71. Lakewood is without sufficient knowledge to admit or deny the claims contained in paragraph 71 of the Verified Complaint and therefore denies the same.

72. Lakewood is without sufficient knowledge to admit or deny the claims contained in paragraph 72 of the Verified Complaint and therefore denies the same.

73. Lakewood denies the allegations set forth in paragraph 73 of the Verified Complaint.

EIGHTH CAUSE OF ACTION

74. Lakewood incorporates, by this reference, its responses to paragraphs 1 through 73 of the Verified Complaint.

75. Lakewood denies the allegations set forth in paragraph 75 of the Verified Complaint.

76. Lakewood denies the allegations set forth in paragraph 76 of the Verified Complaint.

77. Lakewood denies the allegations set forth in paragraph 77 of the Verified Complaint.

NINTH CAUSE OF ACTION

78. Lakewood incorporates, by this reference, its responses to paragraphs 1 through 77 of the Verified Complaint.

79. Lakewood is without sufficient knowledge to admit or deny the claims contained in paragraph 79 of the Verified Complaint and therefore denies the same.

WHEREFORE, for the reasons set forth above, Defendant, the City of Lakewood, requests that the Court:

(1) Enter judgment in favor of Lakewood:

(2) Award Lakewood its costs and reasonable attorney fees incurred in this matters; and

(3) Award Lakewood such other and further relief as the Court deems just and proper.

MOTION FOR PRELIMINARY INJUNCTION WITH REQUEST FOR ACCELERATION PURSUANT TO CRCP 65

PLAINTIFFS, by the undersigned counsel, move the Court for a preliminary injunction, in the form annexed hereto as Appendix A, by said order enjoining the Defendants and those in concert with them from forcing or threatening to enforce

Colorado Revised Statute § 18-9-122(3) against Plaintiffs when, while within 100 feet of the entrances to medical facilities that perform or counsel for abortions, Plaintiffs engage in oral education, oral counseling, oral protest, and/or display of signs, and/or distribution of literature. In support of their motion, Plaintiffs have filed herewith Exhibits 1, 2, and 3, the Affidavits of Plaintiffs Hill, Himmelmann, and Simpson, respectively.

WHEREFORE Plaintiffs pray that the Court grant the instant motion, and Plaintiffs further pray that the Court accelerate the trial on the merits of this matter and set down the trial on the merits hearing together with the hearing on the motion for preliminary injunction.

AFFIDAVIT OF LEILA JEANNE HILL

Leila Jeanne Hill, being first duly sworn, deposes and states:

1. I am a plaintiff in the above-captioned matter, and I make this Affidavit upon my personal knowledge of the facts, and am competent to testify to the facts stated herein.

2. I am a citizen of the United States and a resident of Wheat Ridge, Jefferson County, Colorado.

3. By education and training I am a registered nurse, having graduated with a Bachelor of Science in nursing from the University of Northern Colorado in Greeley, Colorado, in 1972.

4. I oppose the performance of human abortion, because I understand human abortion to be the extermination of innocent human life.

5. I am aware that many women who abort do so because no one has offered them the opportunity to choose an alternative course of action which would preserve the lives of their children and themselves.

6. For eight years, I have engaged in an activity which I refer to as "sidewalk counseling" for the purpose of offering abortion-bound women alternatives to legalized human abortion.

7. Sidewalk counseling consists of efforts to educate, counsel, persuade, or inform passersby about abortion and abortion alternatives by means of verbal or written speech, including conversation and/or display of signs and/or distribution of literature. In sidewalk counseling, I engage in a variety of activities designed to impart information to abortion-bound women and their friends and families:

a. I prepare and/or select informative literature about abortion and its alternatives;

b. I distribute literature on public streets and sidewalks in the immediate vicinity of businesses where legalized human abortions are performed or where women are counseled and advised to obtain abortions;

c. I communicate information about abortion and alternatives to abortion by word of mouth;

d. I carry educational devices, such as a scientific reproduction of the unborn human child at ten weeks gestation, and display such devices to members of the public as part of the counseling and education process; and,

e. I prepare informational signs and posters, containing information about abortion and alternatives to abortion for display to the public and to abortion-bound women.

8. a. To assist other concerned persons in learning how to provide sidewalk counseling services, I have prepared a manual entitled, "Sidewalk Counseling Workbook."

b. Attached hereto as Addendum 1 is a true and correct photocopy of that manual.

c. On pages 2-3 of the Workbook, I discuss the idea of

success in sidewalk counseling. I view success in sidewalk counseling to include the saving of even one child from extermination by human abortion. see page 2 of the Workbook, as well as a number of other visible positive results, see page 3.

d. On pages 5-9 of the Workbook, I discuss guidelines for conduct of sidewalk counselors, as well as guidelines for the creation and use of posters.

e. On pages 19-25 of the Workbook, I discuss methods and approaches for dealing with abortion-bound women.

9. Attached hereto as Addendum 2 is a true and correct photocopy of the information card which I have given to abortion-bound women and other willing recipients.

10. Prior to the enactment of C.R.S. § 18-9-122(3), I had publicly expressed my opposition to human abortion, and I had engaged in public educational efforts to advise abortion-bound women of the availability of humane alternatives to the termination of human beings by abortion, and I had engaged in sidewalk counselling on the public ways or sidewalks within 100 feet of the entrances of facilities where human abortion is practiced or where medical personnel refer women to other facilities for the commission of human abortions, without fear that I could be silenced by members of the public who did not care to hear, see or receive my message.

11. Although I have engaged in these activities around the State of Colorado, I have given particular emphasis to the following present or past medical facilities: Planned Parenthood of the Rocky Mountains of Wheat Ridge, Colorado; Planned Parenthood of the Rocky Mountains of Arvada, Colorado; Planned Parenthood of the Rocky Mountains of Lakewood, Colorado; Planned Parenthood of the Rocky Mountains of Denver, Colorado; and, Lutheran Hospital in

Wheat Ridge, Colorado.

12. In the past, I have engaged in leafletting, handbilling, displaying signs, or oral protesting, educating, or counseling with members of the body politic that pass within their vicinity while they were within 100 feet of the entrances of facilities where human abortion is committed or where medical personnel refer women to other facilities for the commission of human abortions.

13. My sidewalk counseling and abortion protest activities have entailed being within eight feet of other persons. Often it is impossible to remain on the public sidewalk, stay at least eight feet away from another person and continue speaking, displaying signs or otherwise protesting or counseling.

14. In my many years of sidewalk counseling I have seen a number of abortion-bound women change their minds about aborting their unborn child as a result of my sidewalk counseling, and God's grace. I know that there are women today who are thankful that, in the past, sidewalk counseling was treated like the perfectly reasonable exercise of First Amendment rights that I consider it to be; I know this fact because I have seen them smiling into the faces of children that would have been aborted, but for sidewalk counseling.

15. I also know women who have aborted one or more of their children before birth. Many of these women still mourn the losses of children through abortions which they obtained in ignorance of the nature of the act, or in ignorance of the various forms of assistance which would have made it possible for them to give life to their children. A number of these women have expressed regret for the fact that, at the time and place that they entered an abortion business, there were no sidewalk counselors offering the sorts of information and assistance that I make available.

16. I have had to modify the means by which I attempt to communicate to the public about abortion as a consequence of the enactment of C.R.S. § 18-9-122(3). The changes in my communicative activities, forced on me by fear of prosecution under the new law, have made my counseling, education and protest efforts more difficult and less effective.

17. I do plan to continue my activities but I do not want to live under threat of prosecution resulting from the dissatisfaction of others with my message.

AFFIDAVIT OF AUDREY HIMMELMANN

Audrey Himmelman, being first duly sworn, deposes and states:

1. I am a plaintiff in the above-captioned matter, and I make this Affidavit upon my personal knowledge of the facts, and am competent to testify to the facts stated herein.

2. I am a citizen of the United States and a resident of Denver, Colorado.

3. I oppose the performance of human abortions, because I understand human abortion to be the extermination of innocent human life.

4. I am aware that women who abort their children frequently do so because no one has offered them the opportunity to choose an alternative course of action which would preserve the lives of their children and themselves.

5. For nearly seven years, I have engaged in protesting against human abortion and "sidewalk counseling" to offer abortion-bound women alternatives to legalized human abortion.

6. I have engaged in these activities at the Planned Parenthood of the Rocky Mountains of Denver, Colorado, at

the Planned Parenthood of the Rocky Mountains of Arvada, Colorado, at the Lutheran Hospital in Wheat Ridge, Colorado, at the Mayfair Women's Clinic in Aurora, Colorado, at the Boulder Abortion Clinic and the Boulder Women's Clinic, in Boulder, Colorado.

7. When protesting or sidewalk counseling, I attempt to educate, counsel, persuade, or inform passersby about abortion and abortion alternatives by means of verbal or written speech, including conversation and/or display of signs and/or distribution of literature. In sidewalk counseling, I engage in a variety of activities designed to impart information to abortion-bound women and their friends and families.

8. Prior to the enactment of C.R.S. § 18-9-122(3), I had publicly expressed my opposition to abortion through public protest and I had engaged in sidewalk counseling on the public ways or sidewalks within 100 feet of the entrances of facilities where human abortion is practiced or where medical personnel refer women to other facilities for the commission of human abortions, without fear that I could be silenced by members of the public who did not care to hear, see or receive my message.

9. In the past, I have engaged in leafletting, handbilling, displaying signs, or oral protesting, educating, or counseling with members of the body politic that pass within their vicinity while they were within 100 feet of the entrances of facilities where human abortion is committed or where medical personnel refer women to other facilities for the commission of human abortions.

10. I use a variety of posters to express my views about abortion to the public. Some of the signs are textual (e.g., "Stop Abortion"), otherwise are pictorial (e.g., photoposter of "Baby Choice," the victim of a saline abortion).

11. My sidewalk counseling and abortion protest activities

have entailed being within eight feet of other persons. Often it is impossible to remain on the public sidewalk, stay at least eight feet away from another person and continue speaking, displaying signs or otherwise protesting or counseling.

12. My conduct while sidewalk counseling and protesting against abortion has always been well within the requirements of Colorado law; I have never been arrested for, or charged with any offense because of my activities at abortion businesses. In fact, no police officer or law enforcement officer has approached me to warn or advise me that I was engaging in unlawful activity as a consequence of my involvement in pro-life activities.

13. I have been compelled to alter my sidewalk counseling and protest activities as a consequence of the enactment of C.R.S. § 18-9-122(3). The changes in my communicative activities have been forced on me by fear of prosecution under the new law.

14. I do plan to continue my activities but I do not want to live under threat of prosecution resulting from possible dissatisfaction of some people with my message.

AFFIDAVIT OF EVERITT W. SIMPSON, JR.

Everitt W. Simpson, Jr., being first duly sworn, deposes and states:

1. I am a plaintiff in the above-captioned matter, and I make this Affidavit upon my personal knowledge of the facts, and am competent to testify to the facts stated herein.

2. I am a citizen of the United States and a resident of Jefferson County, Colorado.

3. I oppose the performance of human abortion, because I understand human abortion to be the extermination of innocent

human life.

4. I am aware that women who abort their children frequently do so because no one has offered them the opportunity to choose an alternative course of action which would preserve the lives of their children and themselves.

5. For about 4 or 5 years, I have engaged in an activity which I refer to as "sidewalk counseling" for the purpose of offering abortion-bound women alternatives to legalized human abortion. I have engaged in these activities at Planned Parenthood of the Rocky Mountains of Wheat Ridge, Colorado, at Planned Parenthood of the Rocky Mountains of Lakewood, Colorado, at Planned Parenthood of the Rocky Mountains of Arvada, Colorado, at the Lutheran Medical Center in Wheat Ridge, Colorado.

6. Sidewalk counseling consists of efforts to educate, counsel, persuade, or inform passersby about abortion and abortion alternatives by means of verbal or written speech, including conversation and/or display of signs and/or distribution of literature. In sidewalk counseling, I engage in a variety of activities designed to impart information to abortion-bound women and their friends and families:

a. I prepare and/or select informative literature about abortion and its alternatives;

b. I distribute literature on public streets and sidewalks in the immediate vicinity of businesses where legalized human abortions are performed or where women are counseled and advised to obtain abortions;

c. I communicate information about abortion and alternatives to abortion by word of mouth; and,

d. I prepare informational signs and posters, containing information about abortion and alternatives to abortion for display to the public and to abortion-bound women.

7. Prior to the enactment of C.R.S. § 18-9-122(3), I had publicly expressed my opposition to legalized human abortion by engaging in public protests and I had engaged in sidewalk counseling on the public ways or sidewalks within 100 feet of the entrances of facilities where human abortion is practiced or where medical personnel refer women to other facilities for the commission of human abortions, without fear that I could be silenced by members of the public who did not care to hear, see or receive my message.

8. In the past, I have engaged in leafletting, handbilling, displaying signs, or oral protesting, educating, or counseling with members of the body politic who pass within eight of me while I am within 100 feet of the entrances of facilities where human abortion is committed or where medical personnel refer women to other facilities for the commission of human abortions.

9. Among the posters I carry are both textual posters (e.g., "Abortion Kills Children") and pictorial posters (e.g., photoposter of baby killed by saline abortion). In fact, for about the last year, I have been wearing a sandwich sign with the "Abortion Kills Children" sign behind me and the photoposter of the aborted baby in front of me.

10. Among the various kinds of literature which I distribute are an information card the size of a business card, a leaflet showing fetal development, and a brochure entitled, "Did You Know."

11. My sidewalk counseling and abortion protest activities have entailed being within eight feet of other persons. In my experience, it would be impossible to remain on the public sidewalk, stay at least eight feet away from another person and continue speaking, displaying signs or otherwise protesting or counseling.

12. I do not force literature on people. I am cautious about my conduct when I am protesting and sidewalk counseling. I have never been arrested in this activity since I first began. Indeed, I have never struck anyone or made offensive physical contact with anyone at a facility. Nor have I ever foisted literature off on someone.

13. Although some persons who are unhappy with our message have engaged in harassing physical activities (we have had eggs and coke bottles thrown at us, one of our number has had a sign torn up) and in harassing communicative activities (we have had people curse at us and use the expressive prominently displayed middle finger of the hand, and I have been threatened with physical injury by a man driving by in a car accompanied by a woman passenger), I have never responded in kind, and have never even been accused of doing so.

14. I have discontinued sidewalk counseling and protest activities within 100 feet of the entrances to abortion facilities as a consequence of the enactment of C.R.S. § 18-9-122(3). The changes in my communicative activities have been forced on me by fear of prosecution under the new law.

15. I do plan to continue my activities but I do not want to live under threat of prosecution resulting from possible dissatisfaction of some people with my message.

AFFIDAVIT [OF KATHY HAVENS]

I, Kathy Havens, do swear and depose as follows:

1. I am a legal assistant for the Colorado Attorney General's office.

2. I personally reviewed the archive tapes of the legislative debates on House Bill 1209-93. The typed transcripts of these

tapes are attached to this affidavit. The transcripts were typed by personnel at the Department of Law.

3. I compared the typed transcripts with the actual tapes and certify that these transcripts are true and correct reproductions of the contents of the tapes.

HOUSE BILL 1209 - 93 HEARINGS

CHAIR: Representative Benavidez. Representative De Gette.
DE GETTE: Here.
CHAIR: Representative Fleming.
FLEMING: Here.
CHAIR: Representative Friednash.
FRIEDNASH: Here.
CHAIR: Representative George.
GEORGE: Here.
CHAIR: Representative Kaufman.
KAUFMAN: Here.
CHAIR: Representative Keller.
NO AUDIBLE REPLY.
CHAIR: Representative Knox.
NO AUDIBLE REPLY.
CHAIR: Representative Kreutz.
KREUTZ: Here.
CHAIR: Representative Morrison.
MORRISON: Here.
CHAIR: Representative Rupert.
RUPERT: Here.
CHAIR: Representative Tucker.
TUCKER: Here.
CHAIR: Representative Adkins.

ADKINS Here.
CHAIR: Representative De Gette, would you like to give us an opening on House Bill 1209 and then, if you would, tell me which order you would like your witnesses, I would appreciate it.
DE GETTE: Thank you, Madam Chair, and good morning to the Committee. We did bring you donuts, as promised, so I hope you all got one. All Colorado women have the right to reproductive choice, and they exercise that right in a variety of different ways. Colorado women and all Coloradans also have the right to choose other health services which could save their lives, such as cancer screening and treatment, routine medical examinations and pap smears. Today, in Colorado, that right to health care, to unrestricted health care, is in jeopardy. Anti-abortion groups are picketing women's health clinics across the state and are trying to intimidate or physically block all people's entry into these clinics without regard to the reasons they are entering the clinics. These groups use tactics of harassment and intimidation that are almost inconceivable to people who have been raised to, uh, with good manners, and to respect other people's rights of privacy. They do things like come inches away from people's faces, spit at them, scream at them, thrust posters, placards, at them, even thrusting dead cats in their faces and other methods of intimidation. These protestors have tried to physically block people's ingress and egress from clinics to the point of throwing themselves in front of their automobiles. For any woman or man seeking health treatment, this is a traumatic experience in life. But for a woman who is making a very difficult decision about reproductive choice, it is a particularly traumatic experience, not only emotionally, but physically. This problem has been worsened in the last month by the public perceptions surrounding the recent U.S. Supreme

Court decision in the Bray case. In that case, the U.S. Supreme Court said that federal judges may not use the federal civil rights laws to prohibit picketing at abortion clinics. In that case, the U.S. Supreme Court made no comment and, in fact, said that states can, states and localities, can enact statutes and ordinances which will control protests around clinics. However, some of the anti-choice groups have taken the decision far beyond its narrow scope of the federal civil rights laws and have used it as a mandate to block people's access to health care clinics. As a response to some of the atrocities which have been occurring at health clinics, both Denver and Boulder have enacted ordinances which control protests around medical clinics. These ordinances have been in effect for some time and have been upheld and the Boulder ordinance in particular has been upheld in the U.S. District Court by Judge Zita Weinshienk. The bill that I am bringing to you today is modelled after the Denver and Boulder ordinances, and I would like to spend a few minutes talking to you

On page 1 of the Bill, going on to page 2, the first section recognizes that the General Assembly believes access to health care facilities is imperative for citizens of this state, that the exercise of a person's right to protest or counsel against certain medical procedures must be balanced against another person's right to obtain medical counselling and treatment. It's important for the General Assembly to recognize that we'd have to have a balancing test because in order to control free speech, we have to make a time, place and manner restriction judgment as to the importance of a person's right to seek medical care versus a person's First Amendment right to state their position.

The second paragraph on page 2, lines 10 through 12, simply states that a person commits a Class 3 misdemeanor if that

person knowingly obstructs the place, hinders, impedes, or blocks another person's entry or exit from a healthcare facility.

The third paragraph enacts the approach that I've been calling the bubble approach. What it does, is, it sets up an eight-foot radius around anybody entering a healthcare facility. No person may enter that radius for purposes of First Amendment protests unless the person entering consents. Consents under the way the Bill was drafted can either be express oral consent or can simply be a gesture of reaching out to take a leaflet or a handbill. Once that consent is given, the protestor can come closer to the person. Again, if this subsection 3 is violated, the violator commits a Class 3 misdemeanor.

Finally, what the Bill does is it creates a civil remedy as well as criminal damages. In looking at enacting a bubble-type statute, Colorado is at the forefront in this kind of legislation. There has been legislation in other states. Some of that legislation has been even more stringent than the 8-foot bubble ordinance. In San Diego, for example, they require the protestors to be across the street from the clinic. In Washington, they have 10 to 15-foot buffer zones rather than the 8-foot buffer zone. In Florida, in the 17th Judicial District, there's a 25-foot buffer zone. And so, you can see, we've taken a very conservative approach to balancing the right of people to freely walk into and out of clinics with the right of people to protest. I could go on all morning about the necessity for this Bill and the real tragedies that have occurred, but I have a number of witnesses here, this morning, who can articulate it much more eloquently than I can, and so I, I just, unless there are questions at this time, I'd like to open it to testimony.

CHAIR: Thank you, Representative De Gette. I think we will skip the questions at this point because there are a number

of people who would like to testify, and we do go on so early this morning. who would you like to call first?
DE GETTE: Gary Jamieson.
CHAIR: All right. Gary Jamieson.
JAMIESON: Is this okay?
CHAIR: Um hum. Just state your name for the tape.
JAMIESON: Yes. My name is Gary Jamieson. I am the Associate Director and Controller for Planned Parenthood of the Rocky Mountains. It means that I am responsible for the activities that support the activities of Planned Parenthood, like the accounting department and the warehouse and our laboratory. One of my responsibilities includes clinic security. For the past few years, in addition to my day job, I have been giving Saturday mornings to go down and help escort at the Vine Street Clinic, so I have a little over 100 Saturdays under my belt in terms of just seeing what the protest is like, you know, up close and personal, oftentimes, too close. I'm here speaking on behalf of the 26 clinics in Colorado. We see about 60,000 patients for family planning services every year. Abortion patients are only about 7% of that number. There are thousands of patients affected every year by hostile anti-choice activities all around the state. It's not just a Denver issue. We have clinics all over that have stories to tell. In addition to the 60,000 family planning patients, we see 24,000 to 26,000 pregnancy tests every year. About 9,000 of those are positive pregnancy tests, and over 4,000 of those are referred to prenatal services. These are people that want to be pregnant and come to us to find out. We'll do 55,000 pap smears a year, help detect cervical cancer. In fact, it's the efforts of Planned Parenthood clinics and clinics like ours that have taken cervical cancer from being the number I killer of women to a much less serious illness, doing lots of good work in that area. The point

of House Bill 1209 is to give everybody a little space to come in, make their choices and then go on about their business. We need literal and emotional space so that we can come in, go about our business and just go on. This won't solve the problem. It is just gonna be a good first step. We want to balance rights and allow everyone to sort of conduct their business with a little dignity, so, on behalf of our patients, our 60,000 patients that come to our clinics every year, the 250 employees that work here, and friends and partners and husbands that come into the clinics with the patients, I urge your support for this Bill.
CHAIR: Thank you, Mr. Jamieson. Are there questions from the Committee? Representative George.
GEORGE: I just didn't hear your numbers. You said that you have 60,000 patients, and then you said a percent of those are abortion?
JAMIESON: 7%.
GEORGE: 7%. Thank you.
CHAIR: Are there further questions from the Committee? Thank you very much. Susan Parks.
PARKS: Good morning. I'm the Administrator for Mayfair Women's Center, a private doctor's office that offers medical services such as birth control, abortion services and counselling. Currently, there is no legislation in the City of Aurora protecting our facility from anti-abortion protestors engaging in the criminal obstruction and vandalism of our facility. We've experienced many problems with anti-abortion factions that state quote, unquote "rescues" in which they obstruct entrance into our building and harass patients if they try to enter. They've placed glue and metal devices in and on all of our front and back door locks, preventing us from entering our office. They have also caused thousands of dollars of dam-

age by pouring butyric acid into our lobby area. Butyric acid has a very foul smelling odor which causes nausea and a burning sensation to the eyes, and it lasts for months.

It is impossible to remove, and it necessitates removal and replacement of all floor areas that have been contaminated. As a result of this, the Health Department closed the building, which disrupts not only our business for the day, but the businesses of other tenants and health care providers in our building. So, as you can see, we need a bill that protects us from these antiabortionists' actions, so that our time and money can be spent helping our patients as intended and not on lengthy criminal proceedings that we are currently subjected to, so I strongly urge you to pass this Bill.

CHAIR: Thank you, Miss Parks. Are there questions from the Committee? Representative Kaufman.

KAUFMAN: Miss Parks.

PARKS: Yes.

KAUFMAN: What type of clinic is it again? Is it like a women's clinic?

PARKS: It's a women's clinic, yes. Full service, we offer birth control and we do abortion services as well.

KAUFMAN: When these people come in and pour acid on the floor, is that during business hours? Or do they break in? Or?

PARKS: They have done it. The few times that they've done it, it's not been during business hours. They've got into the building.

KAUFMAN: Inaudible.

PARKS: Yes.

KAUFMAN: Can I? Have they been prosecuted?

PARKS: No.

CHAIR: Miss Parks, there are laws so, under which they could be prosecuted. Is that not the case?

PARKS: If we caught them, yes.

CHAIR: Can you explain how you think that for that kind of an incident this Bill would help you?

PARKS: Well, it's mainly just to protect us from... I'm just telling you the problems that we have. I realize this bill won't necessarily solve <u>that</u> problem. More security will solve our problem in that area. But the Bill is very essential for that fact that, you know, when patients approach our clinic, that they are able to come without being harassed, and to protect us in that way. And it does address vandalism, so, in some way, we would have some kind of, something on the books, legislatively, that would protect us.

CHAIR: Thank you. Representative Kaufman.

KAUFMAN: Have you had patients that were coming to your clinic that were not there for an abortion?

PARKS: Oh, yes.

KAUFMAN: That have been harassed?

PARKS: Oh, yes.

KAUFMAN: Could you tell me how they've been harassed?

PARKS: They've been approached and, you know, yelled at and given literature and, you know, "Don't kill your baby." They come in here, "Well, we're just here for a pap smear," you know, so.

CHAIR: Thank you. Are there any other questions from the Committee? Thank you very much.

PARKS: Thank you.

DE GETTE: My next witness is Kay Czarnecki.

CZARNECKI: My name is Kay Czarnecki. I'm a nurse practitioner. I' ve worked with Planned Parenthood for many years. During the last year I've been the manager of the clinic in Colorado Springs that offers varied services, including abortion. Having observed protestors at the Vine Street Clinic

and been involved in that, and, also at my own clinic, I am of the opinion that protestors are not there at all to help women or to save lives, but, rather, to make a bad situation even worse. I don't know what the motives are for intruding into a private situation like they do. The reasons that women choose abortion are many and very tragic. They ordinarily come to the clinic with the support of family and friends who truly care about them and are aware of the circumstances. How dare protestors that don't have any idea of what was behind this decision intrude into this private situation. We do warn people that there may be protestors, to drive past to come into the parking lots. Protestors are not allowed on the parking lot, but, unless there's someone there watching them, they do come on and know full well that they shouldn't be. They hand out brochures and yell, thrust signs in faces and generally try to upset the patient as much as possible, which makes it much more difficult for us to provide care in a scary situation anyway. We do offer varied services. Not everybody that's coming into the clinic is coming for an abortion. They have no way of knowing that. People often won't come on the days that they know we are doing abortions just to get supplies because they don't want to be subjected to that. And you can't hardly blame them. People coming with patients who are presumed to be involved in a personal way, such as perhaps being the mother of the patient, perhaps being the boyfriend or the husband of the patient, are also harassed in very hurtful way. Women are often told that they're giving up the joys of being a grandparent by accompanying someone to the clinic or that they're giving up their fatherhood by coming with someone. These people may not be involved in that way at all. It's very unfair for them to have to be subjected to that. It's a natural thing for people coming into a parking lot, even though we've said, "Don't stop.

Just drive through," to stop if there's somebody waiting there, in the driveway, obviously trying to give them information or to help them out. They don't know that they should just drive by and not pay any attention. They tend to stop, roll down their window, and then they get these things thrust into their cars or in their hands. People will follow along the sidewalk to get as close to their cars as they can so that they continue yelling at them clear up until they get into the clinic. We've had to place security doors where there's double locks. People have to be rung in each of the doors. We have magnetic locks that slide, because we've had our locks glued shut. We've had bicycle locks placed over handles, so that we've had to remove some of the handles from the doors. These things all lead to tremendous expense. They don't stop, though. When people are leaving the clinic, they're often stopped as they are driving out and, again, harassed about this decision. I'll give you a few instances. There was one patient who was very upset anyway. As she was leaving, she was stopped as she was driving out. A clinic member went out and asked if she would like to come back into the clinic for a while. She chose to drive on by herself. One of the protestors got in his vehicle and followed her for a few blocks. She called us then when she got home to tell us she'd arrived safely. There was another patient who chose to meet her ride up the block so that the person driving didn't have to come into the parking lot. We noticed that she was being followed by one of the protestors, so one of the staff members went out with her and stood on the corner and waited for her ride to come to keep the protestor away from her. I hadn't been working at that clinic more than two weeks, when a protestor came up and told me she knew where I had come from. I don't live in Colorado Springs, I live in another city. She'd obviously traced my license plate. This is an attempt at

intimidation. Patients are also intimidated by seeing their license plates being written down. I guess in conclusion, I would just like to say. Oh, I would like to say one other thing. There is an organization in Manitou Springs who evidently run youth camps during the summer. During midweek, we have bus loads of young people brought to our clinic with signs in the afternoon, marching up and down the sidewalks in front of our clinic. These are days that we don't even do abort ions. These are very young people, early teens. So what are they being taught? What kind of cancer is that? I'd just like to say I'd like ta see this bill passed. The further away we can keep people from out. patients, from intruding into these very private situations, the better off we're all going to be.

CHAIR: Thank you Ms. Czarnecki. Are there questions from the Committee? Representative Morrison.

MORRISON: Could you, uh, I noticed you don't have any notes with you, but perhaps you know the numbers off the top of your head. Again, what are the numbers of people who are going into the clinic in Colorado Springs who are not going for abortions? Do you have those numbers? Who are going for other kinds of treatment?

CZARNECKI: I'd like to ask Gary Jamieson to answer this (inaudible) you up.

MORRISON: Well, maybe he can follow that up. I don't want to take any more time. I just want to make it clear. I just want to clearly understand that a large percentage of your women who are visiting the clinics in Colorado Springs are certainly going for other services. Is that correct?

CZARNECKI: Oh, yes. Yes indeed. We are open six days a week. We provide abortion services on two of those days. The other days, and part of those days are also, are devoted to

other services, contraceptive services, mid-life program and (inaudible) services, yes.

CHAIR: Thank you. Are there any other questions from the Committee? Thank you, Miss Czarnecki.

HOPFENBECK: I'm Marie Hopfenbeck. I'm a board member with Rocky Mountain Planned Parenthood. I am also an escort at the Vine Street Clinic at Vine and 20th. I work there Wednesday mornings from 7:30 until 9:00, and I have done this for three years. I'm also a registered Republican. I would like to give you some sense of what happens during the clinic hours when the patients arrive for our services. The Vine Street Clinic is an abortion clinic. We, as escorts, our job is to get the patients into the clinic as quickly as possible. The protestors are on the sidewalk. There are anywhere from 6 to 15 and sometimes more on the Wednesdays when I work. We at the Vine Street Clinic are very fortunate because we have a physical situation which makes things a little better for us. We have a low wall that divides the sidewalk where protestors are walking up and down, divides the parking lot from the sidewalk. When the patients come into the parking area, we direct them to come up to the front door where the escorts encourage the patients to get out and come in immediately, and then, we, whoever is accompanying the patient, we help him or her to come into the clinic when the car is parked. All during this process, the protestors are yelling and screaming. They are flashing their bloody fetus signs. They are yelling, "You are killing a baby." They are yelling at us that we are guards from Dachau, and in my case, an old guard from Dachau. They are talking about fetuses and babies being dismembered, arms and legs torn off. They are saying that someone died in the clinic the day before. They are picking up on characteristics of the patients. They are talk, a young black woman came for services

yesterday. They called her "Mammy." They spoke in a dialect that they thought was appropriate. We, because we are in Denver, we do have the benefit of the "bubble" ordinance. And in some instances it has been of great help to us. I'd like to tell you two incidences which affected me. One was I was asked to move a car that had been parked on the street, and move it into the parking lot. What happens is, when the patients call to make their appointments, they are told by the clinic people to please drive into the parking lot and park their car and they will be escorted in by escorts. Not everybody hears everything when they are going through a situation like this, when they're dealing with some major decisions in their lives. So, some do not follow the instructions, and in this case, the instructions were not followed. The patient and her friend had gone into the clinic and, for security reasons, they were told that maybe they should move their car and bring it into the parking lot. They did not want to do this, so I and another escort went out to get the car. We were immediately surrounded, placards thrown in our faces. We were yelled and screamed at. I was told that. I' d murdered my own children. We got into the truck. It was difficult to maneuver. We creeped along. They were all over us, and I did speak out and say, "Get back. You must get back eight feet." And they did. At least it created a zone of safety. On another occasion, again, a mother and her daughter had not heard the instructions from the clinic, arrived at the gate which leads directly up to the door of the clinic. They had parked, too, on the street. They got to the gate. Unfortunately, the gate often sticks. They were immediately surrounded and yelled at and screamed at, and I told you some of the things they say. The young woman was in tears. We got the gate opened, spoke to the protestors, asked them to move back, they did. We got her, wrapped her up and got her into the clinic and into the door

- there are two doors, safety doors. The mother looked at me and said, "I can't believe this happens in this country." She said, "My daughter was raped." I came out and on that same day, one of the escorts was there just for training. It was her first day. She's a very strong woman, very active in this community, and I looked over at her, and she was against the wall sobbing. These are just some of the things that happen, and I strongly encourage the passage of Diana's, of Representative De Gette's bill, House Bill 1209, relating to clinic access.

CHAIR: Thank you, Miss Hopfenbeck. Representative Friednash.

FRIEDNASH: Thank you, ma'am. Could you explain to us or give us an example of what happened prior to the Denver ordinance?

HOPFENBECK: Prior to the Denver ordinance, we had no recourse. I mean, say, for example, when the young woman and her mother arrived at the gate, there would be no way for us to get them to move back without physical contact. They, they taunt us. They tease us. We try very hard to pretend that they are not there. We totally ignore them. We do not try to stimulate their verbal assaults. It's bad enough as it is. As f say, it does help to create a little area of safety around those seeking services. And the verbal assault, come down sometime. The verbal assault is unbelievable. They're. They're trying to get you to react. They're trying, they're attacking verbally those who are bringing the patient to the clinic, whether it's a husband or a boyfriend or a mother or a friend. When it's a man, they'll say, "What kind of a man are you? You are nothing. You are no man. You are murdering a child."

CHAIR: Are there other questions? Representative Benavidez. BENAVIDEZ: Thank you, Madam Chairman. Has there been an incident since the Denver ordinance where the clinic has had to call law enforcement to enforce the ordinance with the individuals or protestors there?

HOPFENBECK: Well, in the incident of the truck, when I was driving the truck. They first backed off in the first instance. Then I had to park. I didn't really go through the whole story, but, as I, the truck was really something else. I couldn't get the truck enough momentum to get up the ramp into the parking lot, and so I had to park just south of the driveway and then they surrounded us again and we couldn't get out of the car because the doors didn't work from the inside which we didn't realize. We couldn't get out. So, we were kind of trapped there, with all of them right against us, and they would say, we' d say, "You must get back," and they' d say, "You don't know what eight feet is. You have no idea." Well, finally, the clinic people were alerted and they came out and opened the doors from the outside and let us out, and we did file a complaint at that time. The police did come, but nothing happened. That was really right after the ordinance took, was in effect.

CHAIR: Thank you.

HOPFENBECK: Now, Gary Jamieson may be able to answer that other incident when a complaint was filed.

CHAIR: Are there further questions from the Committee? Thank you Miss Hopfenbeck. Representative De Gette, I have not yet received an answer on whether we are going to have to go on the floor at 8:30 and to make sure that the opponents of the Bill do have an opportunity, I' m going to switch now, at the present time and call some individuals who are are listed against the Bill. I do not believe we are going to get through everyone this morning, and unless we can get an extension this

morning, we will have to continue this hearing. Philip, is it Faustin? Would you please state your name for the tape and proceed.

FAUSTIN: My name is Philip Faustin. I represent Operation Rescue Colorado. I'd like to make myself available for questions after I make a couple comments. It seems to me what this Bill is really talking about is not being dealt with. A lot of the things that have been said so far seem to be things that are trying to create a hysteria that there's all these poor women who are being. The image that is being given is that you cannot walk into one of these places without someone right in your face. That's just not true. That probably happens on occasion, but as far as being the norm, it wouldn't be. The talk of healthcare facilities and all these other people going in for all these other reasons. In some of the places where there's a broad range of health services offered; some places, it's just abortions. But we're not talking about women going in for cancer - screening or pap smears. That's not why prolifers are outside of these places. And it's not those people whom they're trying to speak to. I also noticed in the beginning of the Bill it's talking about a person's right to obtain medical counselling and treatment in an unobstructed manner. Well, that is why we are there. We are trying to give correct medical information, information that is being denied inside of those places and, as a matter of fact, at Planned Parenthood in Denver, at the Vine Street Clinic. We have approached them through their director, Sylvia Clark, trying to work an agreement where we could provide correct medical information. We're not talking about biased pro-life information but scientific, factual information concerning the development of that child that is within the woman. We've been denied that opportunity. So we're not there just to harass people. Does harassment happen some-

times? Sure, it does. There's people that do not behave as they should. But that's the exception, rather than the rule. That is not why people are there. The majority of prolife people are there to provide information or to just be a conscience, to stand there and say, "This is not right," or to say, "There are alternatives. You do not have to do this." A couple things about the Bill, also. It's interesting that, you know, there's a multitude of other groups that do these same type activities, from animal rights protestors, anti-logging, Rocky Flats protestors, AIDS activists, who might block a person's access to a place or impede their access to a facility. Well, those people are not being targeted. Healthcare facilities is really a euphemism here. We're talking about the legislature being prodded to protect the abortion industry to legislate uninformed women. And that's what's being talked about in Section 3. We're not talking about someone that's denied access to the place. You cannot pass a leaflet to them. Show a sign. And it specifically talks in here about being on the public sidewalk. Now, I'm sure that there are some legislators who, if they could get away with it, would say pro-lifers are not allowed anywhere near this place, but that's pushing it a little bit too far, so, what is going on in Section 3 is the chipping away of First Amendment rights. When you can't speak or even hold a sign to someone unless they give consent, which, of course, appears to be a question, what does that mean -- consent--, and I don't think the definition given in the beginning was really accurate as far as expressed or reaching out for a handbill. How, would, what would that really mean unless someone gives consent. So, what we're talking about chipping away at First Amendment rights. You can't give someone a handbill. And all this hysteria that's being created, of this image of pro-life people shoving something in someone's face or screaming in their face,

spitting on them, holding dead cats, that's just all hysteria to try to create an environment of why do we have to do this. But, again, I bring up all the other groups that are not being targeted, the singling out of pro-life people because we are politically incorrect. So, let's take away these people's rights, not let them stand in front of a place. Now, what Susan Parks from Mayfair was talking about well, before, we have no way to deal with these things. There's no law in Aurora protecting them from vandalism or trespass. There again, I mean, there's something you can analyze and see, words said to create that hysteria. There's plenty of laws dealing with this. If someone vandalizes. There's laws against that. If someone trespasses, there's laws against that. If someone is harassed, there are preexisting laws against that. But what this Bill is attempting to do is say, "You cannot stand in front of one of these places on the public sidewalk and try to educate someone," and if we're talking about harassment, there's laws for that if someone is harassed, and then going into the civil remedies. You hold your sign and someone is walking down the sidewalk, just passing by the place within that eight-foot range, and they see your sign, they could go and file a civil lawsuit against you and say, "You showed me your sign," or someone driving by in a car sees your sign and says, "Oh, that offended me." So what are we talking about? You're trying to scare pro-lifers from exercising their First Amendment rights from in front of these places, so I urge you not to pass this bill.

CHAIR: Thank you. Mr. Faustin, can you answer a question for me. In terms of someone who is involved in these kinds of protest, how do you tell the difference between a woman who is entering one of these clinics for a normal health check and someone who is entering one of these clinics for an abortion? What's the deciding factor?

FAUSTIN: Well, sometimes, you don't know that, and, I mean there's plenty of times that picketing is going on and nothing is said at all. And there are people who, everyone who walks in a place, they'd say, "Don't kill your baby," and, myself, I would think that's not appropriate because I think you should, use intelligent speaking, if you don't know that's what she's doing, then why say that, why throw that out to everyone. But the fact is if someone is across the parking lot and walking into a place, and you're on the sidewalk or somewhere else yelling at her, she's beyond that eight foot anyway, so this bill has nothing to do about. We're talking about a specific of. You're up there blocking her from going through the door or you're out on the sidewalk and she's walking down the sidewalk or walking past you or something like that. So the generality of what they're there for really doesn't apply, and this Bill, in many cases, wouldn't have anything to do with that.

CHAIR: Thank you. Questions? Representative George.

GEORGE: I believe your comment was if this Bill would prevent people from, I think your words were exactly, "not allowed to stand in a place." Would you point out to me where in the Bill that it would prevent your people from standing in a place?

FAUSTIN: Well, what if I said those exact words, they're not clear as to what I meant. What I would mean by that is it's trying to scare people away from standing in front of these places because just by standing there, you're out on the public sidewalk which used to be a place where you could just be and protest. You know, we're not talking about trespassing or blocking or anything like that. We're talking about what was at one time a completely legal activity. Well, according to this Bill, it's a very chilling thing. If you're just standing there and someone is walking by you and offended by your sign, you can

be found criminally liable, according to this and then, even if you're not found criminally liable, they can file a civil suit against you and say, "I was offended by your sign," and, according to this, they could get damages. So, in essence, that would prevent people from standing in front of a place.

CHAIR: Representative George and then Representative Friednash.

GEORGE: Please show me where in the Bill it shows that being offended by a sign creates a basis for a crime.

FAUSTIN: Well, in Section 3, it says if you display a sign, Section 3, lines 15 and 16, page 2. It says, "You shall not approach another person within eight feet unless they consent for the purpose of passing a leaflet, displaying a sign, engaging in oral protest, education or counselling, and on it goes. So, just holding a sign to someone within that range - we're not talking about shoving it in their face or hitting them with that - just by holding that sign, if someone is offended by that sign, you're guilty of violating that section.

CHAIR: Representative George.

GEORGE: Do you agree that that section means holding the sign within the eight feet?

FAUSTIN: Right.

GEORGE: So, it's the eight feet that bothers you?

FAUSTIN: Right.

GEORGE: Thank you.

CHAIR: Representative Friednash, and then Representative Rupert.

FRIEDNASH: Thank you, Madam Chair. Personally, I'd like to see restriction in subsection 3 be 100 feet wide, but I don't think that's constitutional. In my view, I think this Bill strikes a delicate balance between the First Amendment and access to healthcare, and I think two arms' lengths away is

pretty reasonable time, place and manner restriction, and I wanted to get your comments on that because you can still as Representative George was alluding to, you could still stand eight feet away and hold your sign and have your information available. I don't think that restricts your ability to, as you say, give out correct medical information or educate or hold up your sign. I just don't believe the constitutional, First Amendment right is absolute to do that.

FAUSTIN: Would you introduce a bill doing the same thing for animal rights protestors?

FRIEDNASH: That's irrelevant.

FAUSTIN: Right. Because you're coming from your bias, so that's how you view this. But me coming from the other side, yes, it's very much an infringement upon my First Amendment rights because I cannot be free on that sidewalk to pass out literature to someone or to hold my sign or to try to speak to them, so that's definitely an infringement on my First Amendment rights, and it is far beyond a delicate balance.

CHAIR: Representative Friednash.

FRIEDNASH: One further question, thank you, Madam Chair. I read Section 18-9-111, harassment crime in the State of Colorado. Can you explain to me how harassment can be criminally prosecuted under this statute already?

FAUSTIN: Well, I'm not a lawyer, so I am not completely familiar with what all happens in those types of situations, but there are laws against harassment. If you are harassing someone, continually pestering them, they can file a complaint against you. what I think this Bill is really designed to do is to almost invite people to file civil lawsuits, to take it beyond someone who is genuinely harassed and put it in the area, "Well, he held his sign, and I didn't like what it said or what the picture was, so, therefore, I can file," where something like that,

just holding a sign as someone passes by would not be prosecuted as harassment, as I would understand it, but under this, it would be.

CHAIR: Representative Rupert and then Representative Morris.

RUPERT: Thank you, Madam Chair. Sir, I have a question about your definition of hysteria, and my response, my bodily response in the last two or three days to the phone calls I've been getting, thank goodness, none from my constituents. But, I want to tell you, sir, I have no reason to feel, I'm not going to be entering any clinic, and I know, you know, what my feelings are on this Bill, but when I get phone calls like that, and I think about, then, if I were to have to walk into a clinic, now, after being addressed the way I was - you use the words "politically correct" - I'm talking about being a human being and being addressed on my tape on my telephone by some of the language that I was and by some of the irrational, to me irrational and hysterical talk. Now, I can't imagine trying, as a young woman, going to the clinic for whatever reason, having to pass people who were yelling, and I've gone to clinics when they've been surrounded, and I also haven lived, live in a community where the clinic windows have been shot out and on and on, but I'm just talking about the last two or three days, and I find that hysterical, and I guess I really have a hard time with your identifying what is happening here that this is, that we're just being, the testimony we heard is hysterical. I'm just really having a hard time sitting here listening to that.

FAUSTIN: Can I answer that?

CHAIR: Mr. Faustin, yes.

FAUSTIN: Um, well, I don't know exactly what was said on your machine. Of course, I'm not responsible for that. If it was inappropriate, it was inappropriate. Period. But this Bill

doesn't address that. And it, if someone is going to act that way, then they can get a tape measure and they can measure themselves eight-feet and one inch, and say any foolish or wrong thing they want to someone, it's not going to change that. So, you know, that's not on the point of what we're talking about. It's not going to. I mean there's plenty of things people yell at other people, and they're going to continue to do that. It's not going to stop. What this Bill really deals with is someone who is legitimately trying to speak with someone, not to harass them, not to dog them, but to give them some information. "Here is a legitimate medical alternative. If you have problems, we can help you. Here is some information about abortion itself." So that's what I'm concerned about, and I think that's what this Bill is attacking. There's a lot of other ways to attack someone who is inappropriate in what they do or say, but this is not going to stop that a bit. It's just going to stop the good stuff.

RUPERT: I'd just like to, I'm just really responding to your very first statement as you sat down. As you countered what you heard before, you said, 'Oh, they're just trying to create a hysteria," and I, I just really reacted to that after what I just heard on my answering machine and talking in person.

FAUSTIN: That could be so, too, if on one hand you have someone saying hysterical, inappropriate things to you, I also think much of what has been said earlier this morning was of the same quality because it doesn't deal with the point of this Bill. It's talking about acid thrown on a floor. Well, that has nothing to do with this. If someone broke into the place, then that's burglary. They can be dealt with in that way. If they vandalize the place, this bill won't change that. But much of the testimony was, as I said, just not on the point of this Bill, not dealing with something that's happening within 8 feet, and

then, when we're talking about that, it's all of this talk of, you know, the same language, signs being shoved in their face, you know, that sort of thing. Screaming, spitting, and you know, that's just not the point.

CHAIR: Representative Kreutz and then Representative Morrison.

KREUTZ: Mr. Faustin, are there women in the leadership of Operation Rescue?

FAUSTIN: Yes, there are.

KREUTZ: I'm wondering, have the women gone in as patients to these clinics, for example, a pap smear that is under the cost of going to an actual doctor's office for a pap smear?

FAUSTIN: Have women in our leadership done that?

KREUTZ: Um hum.

FAUSTIN: No, I don't think so.

KREUTZ: That would be, you know, somewhat of a good idea in order to get a handle on how many women are going in for abortions and how many are going in for health care. You might look into that.

FAUSTIN: Can I comment?

CHAIR: Go ahead.

FAUSTIN: That still doesn't really have a lot to do with what we're talking about here. We're not concerned with people going in for pap smears or cancer tests. We're concerned with people going in that are going to have their children killed and, as Gary Jamieson said, they're dealing with about 4,200 a year of those at Planned Parenthood alone. Mayfair probably deals with a fairly similar figure. Susan Parks could probably say. So that's what we're talking about. If someone's going in for another thing, that's fine. Although there's plenty of better places she could to go for that healthcare. But our concern is a woman who is scheduled for an abortion to give her complete

medical information. She's not going to get the complete information on the inside. They will deny her that. They will not give her accurate and truthful information of what is developing inside of her. And from some of their literature, actually the information they give is blatantly false. Little sketches of, "This is what is inside of you," a little squiggly circle, where at the time when Planned Parenthood does abortions at every stage of abortion they do, that child is a clearly defined, clearly functioning human, and if they showed the woman that and dealt with her in an honest way, many of them would not continue with that abortion decision and so that's what hurts these places is when the people are given accurate information, and they start losing clients and that's what we're talking about here is a for-profit business, and every person who turns away from abortion is money lost.

CHAIR: Representative Kreutz.

KREUTZ: Thank you, Madam Chairman. Sir, I understand that you are out to help all the uninformed women in the world, however, you still have that right under this proposed law. You can still hand a woman information, it's just within eight feet. If she wants the information, then she can reach out her hand, and at that point, you can give her the information, so I don't see that this restricts you from that. It just gets the people out of their faces.

CHAIR: Mr. Faustin.

FAUSTIN: Well, if someone's going to be in someone's face, they're gonna do it anyway, you know, there's a big question of what "consent" means and, as I've said, I think the language here, in the whole civil remedy is to scare people away. So, that people will be afraid to be there for any reason, to speak with someone because of this threat. All it takes is one person, an employee of the place, to say, "I know how we can get rid of

these people. I'll come walkin' up the sidewalk and then I will sue them for showing me the sign, and we'll get 'em locked up in jail for six months for that." But how do you know if someone consents? Can you just walk up to them and? That's not defined here, what that consent means. But then we're talkin' about a sign. I think that shows a little bit more of the intent here. We're not just dealing with, "You can't shove this into their pocket or into their hands or continue talking to them if they don't want to." Just like holding a sign, and I think that shows the intent of this Bill, trying to shut down any kind of information given outside of places that do abortions.

CHAIR: Representative Morrison.

MORRISON: Mr. Faustin, you mention the opportunity for people to freely express themselves, those who are on the picket line. I, I need to ask a question a little bit about your organization because I have to wonder how, how do you educate your people in Operation Rescue? A question has arisen about how do you know, although you seem not to like the medical services that these clinics provide, but I don't think that's your decision to make. How do you train your Operation Rescue people? When I have seen youngsters at 12 and 13 and 14 years on the picket line in Colorado Springs. Just what do you tell them before they distribute information? I think they have a right. They should be informed. I think as an organization, you need to take that responsibility. Just as the other side, if you wish to inform the folks going into the clinic, then give me the background of how these people are trained.

FAUSTIN: Well, first of all, we're not responsible for all the picketing that goes on or all the people that picket in Colorado, so I can't speak to everything that happens. As far as what we are responsible for, or something that we organize, we do try to inform people. We have guidelines of how people should be-

have. Of course, you know, as anyone knows, you can't control everything someone does in any situation no matter what it is, so as hard as we might try to have people behave in a Christlike manner, you still might get fringe people who would behave in another way, but as far as an organization goes, you might say we have a code of discipline. Rules for behavior. How people should be. We don't tolerate standing outside of a place and screaming at people. We, as I said before, try to focus in on what someone is going in for, and if they're going in for an abortion, to give them alternatives, in some places, such as OBGYN's office, trying to let his regular medical clientele know "This guy does abortions," and many women would not be interested in having an abortionist deliver their child, so as an organization, as much as we can, we try to guide people in their behavior so that as we are there we are behaving in an appropriate manner as what we would call a Christlike behavior, not there to harass someone or all these other things that we would be accused of. And so, as I said, you know, we can't control everything that goes on. There's many pickets in Denver and around the state that we have nothing to do with. But so, if that answers.

MORRISON: Would the members of the audience. I'll withdraw another question.

CHAIR: The committee has to be on the floor in five minutes. We will be continuing this hearing on Tuesday morning, immediately after the legislature adjourns from roll call. It will probably be approximately 9:15. We will be in this room. Those individuals who are currently signed up to talk will be given the opportunity to speak and testify for or against the bill at that time. I will not, however, have an additional sign-up sheet, so if you were not signed up this morning to speak, we will have only another hour on the bill and I want to

give committee members the opportunity to ask questions of everyone who testified. I will allow two more questions here. Representative Benavidez and then Representative De Gette of the witness who is testifying at the current time, and then we will lay over the hearing until Tuesday morning, the 16th.

BENAVIDEZ: Representative Benavidez. Mr. Faustin, do you have a role in Operation Rescue? Do you have a leadership role? MAN: Yes, I do.

BENAVIDEZ: What is that, Mr. Faustin?

FAUSTIN: I would be a spokesman, as well as part of the steering committee.

BENAVIDEZ: Have you participated in these demonstrations around the clinic?

FAUSTIN: The things that Operation Rescue has done, I've probably been involved in most all of it.

BENAVIDEZ: What I'm asking, Mr. Faustin, and I'm trying to be objective, Mr. Faustin, is that you made a comment, and, you've made several comments in relationship to providing information to uninformed women pertaining to abortion, and I'm asking you if you've participated in providing that information to women in these information-giving times. How do you make a determination of who is informed or who is not informed in relationship to, you know, the pamphlet information or whatever it is you're providing?

FAUSTIN: Before you speak to them?

BENAVIDEZ: Hmm!!

FAUSTIN: Well, you don't know. Someone walking into a place, you don't know why they're going there. They're dead set on doing this, no matter what, or if they're someone who feels, "If I only had a few more dollars, I could keep this baby, or I could have this baby and give it up for adoption," but that's something that you would hope if you were given an

opportunity to speak with someone, and there's many times someone just walks past you, and you can't talk to them, or they're across the parking lot in a situation where you cannot be on the property, so you have no opportunity, but someone who an opportunity presents itself to talk, or to give them something, then you're going from a basis of you don't know what you know, here's some information that can inform them, and if the opportunity presents itself to discuss with them then you can find out what their specifies are, what their questions are, why they're doing this.

BENAVIDEZ: Madam Chairman.

BENAVIDEZ: In my last question. If you don't know which individuals are informed and which individuals are uninformed, as part of the steering committee of Operation Rescue, do you identify certain clinics, and is one of those clinics the Vine Clinic, in relationship to what your steering committee believes as the uninformed individual that need to go to a particular clinic and Operation Rescue goes there to inform those individuals?

FAUSTIN: Well, as far as the Vine Street Clinic goes, and Planned Parenthood, we haven't had anything officially to do with that for a couple, two and a half years, probably. We haven't organized anything there. There's another group, you know, a loose-knit group of people who picket there regularly, but that's not one of our activities, so I can't speak to what happens there.

CHAIR: Thank you, Mr. Faustin. Representative De Gette.

DE GETTE: Sir, I just have one question. I believe you testified that Operation Rescue teaches its people to be civil and to respect distances and so on, and my question to you is: Is it Operation Rescue's policy that it is a civil form of protest

to come within eight feet of someone when that person doesn't consent to you coming within eight feet of them?

FAUSTIN: Well, if the person doesn't consent, then, you know, if they're walking into a place, and they're just going to keep going on in, as far as being within that, you know, and dealing upon the point of this Bill, you know, within that eight foot, I mean, that's where everything that happens as far as passing out a leaflet or oral education, much of that would happen within that eight foot, so in that sense, of just trying to talk to someone, yeh, I think that's very important, just as here we are, sitting within three and-a-half feet of each other, and if we were wanting to carry on a meaningful conversation, this is about the distance that we would do that. Most people, if you'd think of how you talk to people, you don't fit here and they over there, and you have this nice conversation about what's going on with your life. You get closer to someone so you don't have to speak loud, if you want to give them something, and that sort of thing, so that's why I think that it's very important that we be allowed to be within that eight foot and to restrict us to be outside of That, then that cuts off that meaningful conversation, the passing of literature and things like that.

CHAIR: Representative De Gette.

DE GETTE: So you think you should be able to be in that eight feet whether or not the person consents. Because, of course, under my law, if someone consented to you coming closer to talk to them or give them a brochure, you could. So, it's your position that it's civil and appropriate that even if the person doesn't want to talk to you, take the brochure, have the bloody fetus thrumped in their face, you should be able to stand closer than eight feet and do that.

FAUSTIN: I think we should be able to be within that eight feet, and even if, you know, because sometimes someone's

walking past you and you start talking with them, you can't say everything you can say in one sentence. "Can I offer you some information?" "Are you here for an abortion?" I mean, that's question number one. You're walking along the sidewalk. You're going into the place. Maybe they're silent. Maybe they' re, "Are you here for an abortion?" They say, "Yes." Then, you're walking on. "Can I offer you some information on alternatives?" And, you know, the conversation builds. And so, to say that you walk up to someone and it has to be all done in one sentence, or something like that. See, to be within that eight foot doesn't imply just by being there that you're harassing someone. They might not be real interested. I mean, they're there for an abortion. They've got this problem. They want to take care of this problem. But after you talk with them, as you're walking down the sidewalk for 10 - 15 seconds, which most of the time you wouldn't get that because they're heading onto the property or something, it might be your last question that hits home, and then they're ready to talk, "Well, yeh, if I had some help, then I wouldn't get an abortion." But you're not going to establish that on the initial half a second sort of thing, and I think what this Bill is dealing with is coming from an assumption that our goal is to harass, so it's kind of like, "If you don't mind being harassed, then you can consent," but that's not what we're dealing with. It's an edu, I mean, as it speaks here for the purpose of education. Well, how long does education take? Is that something, you know, ask a first grader, do you want to be educated for the next twelve years? No. But it's a process that takes time. It can't be all done at once, so there might be someone who initially, they're resistant to what you have to say, and as I said before, there can be inappropriate things in ways that you deal with people, but what I'm talkin' about is the proper thing. If your goal is to educate, you deal

with that initial thing. You deal with something else, and you're hoping to find out where they're coming from. "Why are you doing this?" Because the truth is, and the abortion industry admits it, that most people going for abortions are doing so reluctantly. It's not something that they're thinking, "Oh, boy, I'm finally pregnant. Now, I can go get an abortion." And so why are they dealing with it reluctantly? Why is it such a difficult decision? And that's what we're there to help people with. If this is so bad of a decision to make, we can help you not make it.

CHAIR: Thank you, Mr. Faustin. Remember, the hearing will continue in this room on Tues. House Judiciary is adjourned.

- - - Tues. - - -

CHAIR: June Harrison.

HARRISON: Good morning, Ladies and Gentlemen. Thank you for this opportunity to speak before you today. My name is June Harrison. I'm a prolifer from Colorado Springs. I have been exercising my constitutional First Amendment rights of free speech and peaceable assembly for approximately the past ten years, mostly in the Colorado Springs area. I have been called every name under the sun. I've gotten the finger hundreds of times, and we've even had bomb threats. The last one was on our answering machine about two or two-and-a-half years ago. You have before you today House Bill 1209 proposing an eight-foot bubble zone and a suggestion of a radius of 100 feet of the entrance to a healthcare facility. According to this proposal, should the statute be violated, persons would be subject to a Class III misdemeanor. Both of these restrictions are clearly unconstitutional. The eight-foot bubble zone is seeking to abridge, and abridge is what's used in the First Amendment, and the definition of abridge is "to curtail

or lessen or deprive or put prior restraint on free speech." This includes leaflets and brochures, signs, pictures, and et al. The radius of 100 feet seeks to limit peaceable assembly. This proposed legislation is definitely discriminatory in its proposed limitation on free speech and assembly. Its limitation targets a small group of people whose actions another small group of people disagree with, certainly not worthy of becoming state law. However, according to the First Amendment, which guarantees the freedom of speech and the right of people to peaceably assemble this proposed Bill is contrary to First Amendment rights. There have been legal cases ruling bubble zones unconstitutionally abridge free speech in public places. Since you are the judiciary committee, I would suggest you study these constitutionally ruled cases very carefully before you make an unconstitutional decision to present to the House floor. Last month, at Stapleton Airport, I heard a public announcement over the loudspeaker that there could be people distributing literature in the area, that these people were exercising their First Amendment rights and people could either accept or refuse the offered literature. There is no eight-foot bubble around me to protect me from their approach. Should there be? Or will there be? Is there going to be a new law written every time someone doesn't like the activities of someone else? Peaceful demonstrations, pickets and protests are activities generally protected under the First Amendment to the United States Constitution. No matter how offensive the language may appear to be, there can be no absolute ban on a right to free speech or the right to peaceably assemble. Because of the unconstitutionality of House Bill 1209, I urge you to reject this proposed legislation. I thank you very much.

CHAIR: Thank you, Miss Harrison. Can you tell me which cases you believe have declared the bubble unconstitutional?

HARRISON: I don' t have them with me. I had a piece of other literature and had the cases and yesterday was a holiday and we did not have a chance to go to the law library to research those. But in a few days we could and we could send those to you.

CHAIR: Thank you very much. Are there questions from the Committee? Thank you for your testimony.

HARRISON: Thank you.

CHAIR: Diane Dillingham.

DE GETTE: Madam Chair, she was one of my witnesses, last time, and I don't see her here this morning. She is the chair person of Colorado Republicans for Choice and has volunteered for many years at the Vine Street Clinic in Denver. She was going to testify about the vast improvement in relations at the Vine Street Clinic since Denver adopted the eight foot bubble ordinance about how people came up right into people's faces before the ordinance was enacted in Denver and now how they stay eight feet away and it protects access. I apologize. I think with the weather she probably was unable to return.

CHAIR: All right, thank you. Lois Meyerson, or Mayerson? Linda Coat? Cleta Jasper?

JASPER: Good morning, and thank you for allowing me to speak. I am Cleta Jasper from Colorado Springs. The referenced bill appears written to violate First Amendment rights of sidewalk counsellors on public property around abortuaries. The prohibited activity includes engaging in education or counselling. We're told the women who choose abortion have done so as adults fully knowing the facts surrounding their choice and are ready and able to take full responsibility for that choice. Yet the drafters of this Bill seem to wish to see women treated as incompetents unable to fully

process further information or not needing to know. It sounds like "Big Brother." The legislature would deny a woman information, violate her right to know, and her right to choose to consider or reject what a sidewalk counsellor offers to her by way of voice or by pamphlet. It appears the desire to protect abortion seekers, and for that desire, I do commend you. However, the reality of the Bill is the protection of abortionists and their lucrative industry. Women, again, are the victims. Abortionists fear a woman's ability to cope with her problem pregnancy. They've been known to exploit her fears to keep her on their abortion table. They lose money if she changes her mind and goes home without being aborted. Not only are pro-lifers the people helping women with material and emotional assistance during her pregnancy, but they also pick up the pieces after her abortion and strive to bring the abortion-damaged woman back to wholeness without condemnation. Postabortion syndrome is a very real pain felt by multitudes of women after abortion. I've cried with the women over a table or over the phone if they hurt after an abortion. One friend told of her anger at the state of Florida for permitting legal abortion, and, in her mind, allowing her to take such a destructive action. Another said she was never told that there was any practical aid available to her if she continued to carry her child. So much for true pre-abortion counselling. Another said that all the way to the clinic, she was hoping someone would stop her. For her, there had been no sidewalk counsellor present. These are only three incidences, and I'm not a factual study, of course, but these expressions of pain were only one of many for each of these women. I urge you not only to kill this Bill, which would further exploit women, but also to pass legislation, but, also to pass legislation to insure that all women are fully and factually informed of all the options and all the facts before their

abortions. Support her right to know. And I thank you very much.

CHAIR: Thank you, Mrs. Jasper. And are there questions from the Committee. Thank you for your testimony. I understand one of the people that I called earlier has now come into the room. Diane Dillingham.

DILLINGHAM: Good morning. The reason that I've been asked to speak this morning is I was a volunteer escort at the Vine Street Clinic in 1988, which was before the so-called "bubble ordinance" Denver passed. Being an escort at that time was truly a frightening experience. We weren't afraid of signs, we weren't afraid of pamphlets, we weren't afraid of words. We were afraid of being physically assaulted, which we were numerous times. We were sorely afraid for our physical safety. The goal of the protestors at that point was to shut down the clinic. The goal of the escorts was to maintain access for the people coming to use those services and their safety while coming to obtain them. Most Saturdays we arrived at the clinic somewhere around 5:00 o'clock in the morning. We had to be sure that we could get in before the protestors arrived. Several staff and certain volunteers would spend the night at the clinic to insure that someone would be there. The protestors would arrive in caravans. They'd go to a central place to meet, and then all caravan down to their chosen target, and we would never know from one Saturday to the next whether we were to be the target or not. They were very well organized. They had even decided which ones were going to break the trespassing laws at that point. Their first action was always to block our driveway. I don't know if you've been down to the Vine Street Clinic or not, but there's a large gate, and they would gather there so that the cars carrying the patients and their families would not have access to our parking lot. As escorts it was our

job to leave Planned Parenthood's property, go out to the cars which were then forced to park on the street and escort the patients in. We were either issued vests or badges or T-shirts - it would depend on the day - so that they could easily identify us and tell us from the protestors. Then we would surround them. We'd put them in the middle of us, and we would walk them into the clinic. The people trying to stop their access would then surround us. They would push, they'd shove. Sometimes, they'd lose control and they'd bite us and kick us and pinch us. Always. It wasn't fun, but we had to put ourselves physically between the patients and the protestors. It was frightening, and it was dangerous, both for we as escorts and for the patients. After all the patients were into the clinic, the protestors would then try and storm the building. They'd climb over a fairly low wall in front, and they' d rush towards us. We would link ass and try and keep the door to the clinic open. Many times, the police were there. They would have mounted escorts, they would have dogs, and they would put themselves between us and the protestors. Most of those protestors were arrested for trespassing. The police would have a large bus out in back to expedite the hooking process. The only way that the other people, the ones who were physically harassing us, could be prosecuted is the police swore out individual warrants for assault. It was very difficult. They were working in a very crowded situation, it was very difficult to tell who was doing what in a situation as confused as that, and it would have been very difficult for us to say, "This person did this " "This person kicked," "This person shoved," and so they were almost never charged. You've heard a lot about the fact that the people opposing this law are really trying to educate. I'm sure this is true for some of them, but it rings very hollow to me, and it especially doesn't wash because we had as

much problem getting our patients out of the clinic as into the clinic. When they were leaving, we had as much problem protecting them as we did when they were going into the clinic. The anti-choice movement is aware that they are on the losing side of this debate, legally they've lost the battle, but they are well aware that the legal right to a procedure is very different from having access to that procedure. Their new tactic is to accept the legality of abortion but to make the procedure impossible to obtain. I ask that you support the clinic access law so that all people can have safe access to clinics, free from physical intimidation and harm.

CHAIR: Thank you. Are there questions for Miss Dillingham. Thank you very much. Leon, is it Gonzales?

MAN: (Inaudible.)

CHAIR: Mr. Garcia, Mr. Gonzales is the person who signed up, so, I'm sorry, but, in keeping with the original intent, you will not be allowed to testify, thank you.

MAN: (Inaudible.)

CHAIR: Mr. Gonzales. Thank you very much. Um, Herald Lambert. Would you please state your name for the tape. Thank you.

LAMBERT: Good morning. My name's Harold Lambert. I have a very brief prepared statement after which I will answer questions. I'm a registered Democrat. I have been active in the pro-life community in Boulder County since about 1980. I have picketed four locations in Boulder where abortions are performed, and I have also picketed the Vine Street location. Boulder has an ordinance for several years which is similar to the legislation being considered. When the ordinance was being considered by the Boulder City Council, the then Chief of Police, Jay Prost, testified that the ordinance was not needed. I would point out that no one has ever been cited under the

ordinance in Boulder. It is my understanding that three people in total have been cited, all of them on the same morning, at the Vine Street location. Charges were dismissed on two of them, and the third person was involved in the Desert Storm callup and has not returned to Colorado. I believe there are already well-written enforceable laws regarding harassment which are more than adequate to allow those seeking an abortion and those desiring to provide information to them to occupy the public sidewalks without infringing on each other's rights. I know you've heard testimony from those in the abortion business that many of the women who come for abortions have been emotionally traumatized by picketers. I cannot accept such accounts as reliable. In Boulder, there is only one abortion clinic where we have the opportunity to pass out literature. That's the Alpine Clinic, operated by Warren Hern. It is only picketed an average of about four hours per week. We probably have contact with less than 10% of those entering the clinic during the typical week. My own experience is that about 5% to 10% of the women entering the clinic accept the literature we offer. The only intense discussions I've had when picketing have been with Mr. Hern or one of his employees. Some of the picketing is on Saturday, when the front door is not used and those coming for abortions park in the rear of the building and enter through a door unseen by the picketers. I don't understand why Mr. Hern has any of his customers enter through the front door if he is truly concerned about their contact with picketers. It was mentioned last week that bullets had been fired at Mr. Hern's clinic. There is no evidence to support that the bullets were fired by pro-lifers or that Mr. Hern staged the event himself. Most of the women I offer literature to either say nothing and walk past me or they say no and walk past me. Those who accept the literature are more likely to talk

with me when they leave the clinic. The ones who have tried to use the bubble ordinance in Boulder are the clinic workers. I am aware of two cases in Boulder where physical contact occurred when the picketer was pushed or hit by a clinic worker. You should also be aware that at the Vine Street Clinic, we've heard a lot of talk about people shouting at people entering the clinic. The main reason for that is there is separation of 15 to 30 feet because the women generally drive into the parking lot and usually do not pass by the picketers on the sidewalk. I'm sure that you know that for millions of Americans, abortion is not a medical treatment but instead a serious moral issue. A moral issue that is far from being settled and is far from being an issue that the two sides can even agree to disagree on. I'm not going to try and define the positions of those who are pro-abortion and call themselves pro-choice, but those who are pro-life deeply believe that a person is killed each time an abortion is performed. This bill unfairly penalizes pro-lifers' ability to present the other side of this critical issue by restricting their right to pass out literature. This Bill would essentially give abortion clinics ownership of the public sidewalks which has traditionally been a protected area for First Amendment rights. I might point out some practical difficulties with the law. Many sidewalks are less than or are barely eight feet wide. Are prolifers supposed to leave the sidewalk to maintain an 8-foot buffer? What if I'm standing on a four-foot wide sidewalk and a person begins to approach me from 20 feet away and I begin to talk to that person. I stop my own movement but continue talking to them as they continue to narrow the distance between us and pass within four feet of me on the sidewalk. Have I violated the proposed law? Remember, I stopped moving when the other person was 20 feet away. If you have not already done so, I suggest it would

be useful for you to visit several clinics unannounced and observe picketing activity. I also suggest you talk with the police in Boulder and Denver. The picketing activity is no different now than it was before the ordinances were passed, and there has been no one arrested and no one even cited in Boulder and, actually, no one has paid a fine in Denver. If these ordinances were needed, there would have been numerous picketers cited in the last several years. Since there have not been, it appears the only purpose of these ordinances have been to try and intimidate pro-lifers from their constitutional rights, and I suggest the same will be the case with this Bill.

CHAIR: Thank you, Mr. Lambert. Are there any questions from the Committee? Thank you for your testimony. Paul Ruzicka.

RUZICKA: Hello, my name is Paul Ruzicka, and I've been a volunteer escort at the Vine Street Clinic for the past three-and-a-half years. I've been there almost every Saturday during that time and, occasionally, on some other days when I've had my time off from work. First off, I want to say that one major difference between this Bill and the Denver ordinance which makes this Bill better is that it's assumed to be active all the time, whereas the Denver one has to be invoked each time by a patient coming in and most patients don't realize that the law exists and, therefore, that's one reason there hasn't really been much use of this in time for citing people because the patients have other things on their minds and not are really thinking in terms of the ordinance. But I just want to let you know that protestors are there all the time, shouting and screaming. There are some that are reasonably rational, but there are many others that are just gone. They will even shout and scream at cars, you know, at the people coming in through the driveway, and this in effect also creates a safety issue because they will be

partially blocking the driveway and walking very slowly coming in, trying to shove information into the car during warmer weather when the windows are open, and this really does not, you know, aid in that regard. If at least this bill keeps them off the driveway, there'd be less of a safety issue, that would be one extra benefit from it, because there is a safety issue in that area because They often put large signs up on either side of the driveway which prohibits people from actively seeing traffic coming and going on the street and, also, patients coming in cannot see the protestors on the driveway. They will shout at anybody coming in, male, female, it doesn't matter. They have no way of knowing who is coming in for an abortion. I, as an escort, don't know exactly who is coming in for an abortion, who is coming in merely as a friend or a family member. They will scream at everybody. There was even one instance I recall where a delivery truck came in, might have been UPS or something, and they were screaming at the delivery person for helping out murderers and child killers, and this delivery person come in to ask for directions, wasn't even there to deliver a package. Last week, Mr. Faustin suggested that this bill would abridge the right of free speech, then. I suggest that whether you're one foot away or eight feet away, the words have the same impact, the same meaning and they can be just as abusive, but at least they are not in the people's faces. They still have the right of handing out information if the people so want it. If the patients do not feel as though they are getting accurate information, they can always come back out and ask for the information or even go to a place called the library where they can have even more information. I don't know if they know that tactic, but a library is a good place for information, if somebody doesn't feel they're getting it. The clinic helpers do give full information. There was even one

instance I know where one counsellor told me of a circumstance where one patient did not really want to have an abortion but felt that she could not financially afford it and this counsellor actually gave this patient the names and numbers of some of the anti-choice groups who claim to give financial aid. So they are giving information out (inaudible) as well as other areas. This law is needed just to keep things down at a lower level of, just to keep things down on a little more less emotional level. I would even guess that a majority of the people coming into the clinic, when you count all the significant others - boyfriends, family members, people coming in for other services or information - the people coming in for an abortion are probably in the minority. But they will yell and scream at everybody, and our job as escorts sometimes is in a way to protect the protestors, because sometimes, some of the boyfriends, fathers, husbands, really get upset and want to go out there and hurt them and by keeping them away we have a better chance of preventing this sort of thing all around. So I urge you to support this Bill, please.

CHAIR: Are there questions for Mr. Ruzicka. Thank you very much. Virginia Tully. Jeannie Hill.

HILL: Madam Chairman and members of the Committee, I want to thank you for hearing me today. Before I start, I would like to submit to you 13 copies of 10 questions for each of you that I think are important to consider before you pass this Bill out of, even out of committee.

CHAIR: All right. Staff will bring it.

HILL: Okay.

CHAIR: Please state your name for the tape, Mrs. Hill.

HILL: My name is Jeannie Hill.

CHAIR: Thank you.

HILL: I'd also like to submit for the Chairman, my testimony, and I'd like to submit my sidewalk counselling work book which is gone in all parts of the world. It's currently being translated into Spanish for South America. There is also literature that we hand the mothers outside the abortion clinics, and I'd like you to look this over, and I think you'll come to the conclusion that there is no malice involved here. You received a copy, last week, of Jean Otto of the Rocky Mountain News article. Several years ago, I took this out of the paper. I've given lots of copies of this, probably a hundred copies, to friends, people around the country. She emphasizes in this that our freedom of speech is the keystone of all of the other freedoms that we have in this country. I think if this Bill passes out of the legislature and becomes law, we'll be setting a horrible precedent for our Bill of Rights in this country. I'll begin by saying that I'm a sidewalk counsellor because I became aware that Planned Parenthood and other abortion providers in Colorado were selling their abortions by misrepresenting the truth, distorting the truth, obscuring the truth, telling lies to their own prospective patients, and I have proof of this in 71 pages. One bereaved abortion patient from Dr. James' Park Mayfair Clinic is seeking legal recourse for the doctors grinding up her baby's body in a manual meat grinder without her permission for this type of disposal. She's not the first, and she'll not be the last to be bitterly disappointed in the abortion counselling she received by providers of abortion. Choice was denied. And choice is denied at abortion clinics throughout Colorado. My organization was built to provide women the opportunity to review all of the factual medical and biological information before having an abortion. If you pass this Bill, you're taking the right to privacy of an individual and the right to privacy of the medical facility and its staff and

overlaying them onto the public sidewalk where the right of free speech has preeminence. Why are you limiting yourself here to a hundred-foot bubble? why not extend these rights for a quarter of a mile or to the Denver city limits, or even to the borders of the State of Colorado? This law is more like a blanket. It hides the truth. This Bill makes an illogical assumption that all people do not want to be informed of the facts. Remember that some people do. The state should be guaranteeing access to our kind of information instead of creating an obstacle to it. Whose priorities here are trying to control the rights of others? Does our government, as well as Planned Parenthood, have a priority of making choices for women? The police hired by Planned Parenthood stand in the parking lot and offer to press charges for the patients, but the patients aren't interested. Because of Planned Parenthood's failure to interest their patients in filing charges against us they've had to search for anyone who will. Their off-duty hired guns are more than willing to comply. Other non-patients will volunteer to make a charge. Anyway, it's apparent that Planned Parenthood has their own best interests at heart in seeing this law passed. Our speech, although well tolerated by the patients, is proving to be poorly tolerated by those who sell abortions. I believe that a need for a law by patients was either misrepresented to the sponsor of this Bill, or it is believed by its sponsors that the State has a compelling interest in protecting Colorado's abortionists from losing business. The proof is in the lack of evidence that abortion patients have felt any threat to their right to have an abortion and the mass of evidence that the threat is instead to those who choose to sell abortions. Where is the evidence that those seeking medical care or abortions have a need for an additional law for protection of their right to seek abortions? Have you researched this

perceived need? Have you asked how many charges filed against pro-lifers have come from patients, have come from medical patients? I think probably none. And I think you should research that. How many patients have pursued the existing remedies, any of the existing remedies, such as disturbing the peace, harassment, disorderly conduct, the bubble bill ordinance that exists now? And why have they not? Because they either choose to not or they have no complaints at all. Now, since 1985, at Rocky Mountain Planned Parenthood Abortion Clinic on 20th and Vine Street, according to 1990 statistics, they have aborted approximately 27,776 patients. Out of 27,000, you'd think we'd have at least one or two complaints. Check it out. How many charges have instead come from abortion clinic staffers and nonpatients who volunteered to file complaints against pro-lifers? How many acquittals or not guilty verdicts of pro-lifers defending themselves against abortion clinic workers and not patients have there been in the Denver courts over the years that would suggest harassment under color of law toward our own people instead of the patient? I know of about 26. I offer this last question to suggest that because the abortion providers have failed to prove a need for someone else's protection through the court system, you certainly cannot prove that they have any need for the current bubble ordinance. They are making a last ditch effort to choose for others what they need by using you lawmakers to give permits to people to license my free speech. The basis of this law is hearsay from people who profit financially from abortion or who volunteer for the abortion cause. They give testimony to convince you that other people must have a need of this law. Do you believe their testimony? If so, you'll be passing a new state statute on the word of abortionists instead of evidence from the people the law is

designed to protect. You might say the court system has failed. Planned Parenthood and other abortionists, both on the local and the national level. So now, they're appealing, both nationally and locally, for the legislative bodies to give them what the courts will not, an unencumbered right to sell abortions. Courts require proof, you know. Legislative bodies do not. This proposed law is hyporcritical as far as the State of Colorado is concerned because on the one hand, you're saying that all women, no matter what her age, in the State of Colorado, are old enough to decide when to they can use birth control, an IUD, get a surgical abortion, get pregnant, have a baby. But, on the other hand, you're saying these same women are not mature enough to say, "No, thank you, I don't want your conversation or your literature." I would like for you to avoid haste in passing this Bill out of committee today. If you pass it on, you're really saying that speech in Colorado is more dangerous than the licensing of speech. I have discussed this matter with attorneys who believe that this Bill poses a substantial threat to both the Colorado Constitution and the United States Constitution. I'm advised that if this Bill is adopted as law, a cause of action will be available to me to challenge the constitutionality of the law. And, like Roe v. Wade, I won't need to wait for a denial of my rights in order to challenge this law, because the law itself will be a threat to me every time I go out onto the street near a medical facility. Thank you very much.

CHAIR: Thank you, Mrs. Hill. Are there questions from the committee? Thank you for your testimony. If you would like to leave that with staff, and they'll bring it to me. Thank you. Nancy Jenkins.

JENKINS: Hello, my name is Nancy Jenkins. I am a patient of Mayfair Women's Clinic, and I am also a patient of Planned

Parenthood of the Rocky Mountains, and I have, through our current laws, filed complaints against these protestors. I am here to talk to you today about the viewpoint of a patient. In 1981, I had an abortion at Mayfair Women's Clinic. had to go through counselling both at my home medical facility and again through the counsellors at Mayfair. The information I got was thorough, in my personal case, more thorough than I wanted it to be. I was dying of cancer. I was on chemotherapy. I did not have a choice. It was my life. I would also like to tell you I am an escort at Vine Street, and I have been an escort since 1988. I have been involved in the Operation Rescues, when they became violent. I have been hit by men twice my size while trying to get 12 and 13-year-old patients into the clinic, protecting them with my body. I have also worked at Planned Parenthood as an employee. I have dealt with patients after they have come in, after they have been yelled at and harassed by the protestors. It is intimidating for any patient to drive to our clinic because there are cameras. As far as the 8-foot ordinance, it has helped at our clinic. The reason it has helped is that when I go out into the street to either tell a patient to drive into the clinic or if their mother, father, spouse, husband, boyfriend or friend is waiting for them, to tell them to please drive into the clinic. It gives me a way of telling the protestors to get away from me while I inform them what is going on. Two weeks ago, I had an incident where I had a patient inside the clinic. The mother was parked out on the street because she could not get through the driveway because Al Garcia and other protestors were blocking the driveway. I went out onto the street to try and get her to roll down her window enough so I could tell her to please come pick her daughter up, who, by the way, was there for the results of a pelvic exam, not an abortion. The minute this woman even cracked her window, five

pamphlets were shoved into her car against her will. I at that time informed the protestors they needed to back away eight feet or I would call over a police officer. They did so. The woman drove in safely, and the protestors remained safe from being hit by her car. I feel this ordinance would also, as Mr. Rozicka stated, protect the protestors. I have more times than I can count put myself between a patient's significant other and a protestor, often thinking "Why am I doing this?" To save them from clobbering a protestor who is screaming and calling them names. I have been called numerous names. I have watched these people try to counsel patients and the process goes that they will intimidate them into stopping either physically or with their words and then try and give them literature. I do not consider this counselling. And it is my personal experience as an abortion patient that the information has already been given. This law would also give a buffer zone to the patients so that they could gain access to the clinic and it could be a little bit more passive of an experience. It is a very traumatic experience to go through an abortion. I can tell you that first-hand. It is not something that I would wish upon any woman, but it is a necessity, and I thank God every day that it was legal. I now beg of you to pass this ordinance so that other women may have safe access to an already legal procedure. Thank you.

CHAIR: Thank you. Are there questions for Mrs. Jenkins? Representative De Gette.

DE GETTE: Thank you, Madam Chair. Mrs. Jenkins, have you found in your experience that the protestors seem to be aware of the 8-foot bubble in Denver?

JENKINS: Yes. At our clinic, they do, in fact, they often yell at us to stay 8 feet away if we go out on the street, so they also use this ordinance to protect themselves.

CHAIR: Representative De Gette.

DE GETTE: And, in your experience in dealing with this Denver ordinance, are people still able to communicate from 8 feet away, just not harass or intimidate?

JENKINS: Most certainly. Like I said before, most of the protestors who yell at a patient get their attention. If the patient wants to gain information at that point, they will then approach the protestor. You can most certainly hear them for more than 8 feet. They show up with megaphones. They're screaming. We have disturbing the peace complaints filed weekly on these people, by the neighbors who are woken up early every morning by them. They' re there five days a week. So, yes, they can be heard, and if the patient wants information, they often will then approach the protestor to see out of curiosity or if they feel a need more information.

CHAIR: Are there further questions for Mrs. Jenkins from the committee? Thank you very much.

JENKINS: Thank you.

CHAIR: Mark Simon.

SIMON: Madam Chairman and members of the committee, thank you. My name is Mark Simon. You've heard an awful lot of talk the last couple of days about abortion clinics, and I think I'm going to put a little different slant on the viewpoint here. I have passed along copies of a support letter for this Bill from the Colorado Coalition of Persons With Disabilities. The reason they're supporting this Bill, among other things, is recently there have been two other incidences where people have been impacted by protestors, have you, that were not abortion patients while trying to enter a medical facility. The most recent one was, if all of you recall, there was a gentleman in Pittsburgh, recently, who received a baboon liver, who was dying of hepatitis, and that was the only possible way to save

him. He became the target of animal rights activists. In the last six months, there was an incident in Florida where a person with a disability became a target of anti-Medicaid protestors, to use that liberally, and he ultimately ended up being assaulted and knocked out of his wheel chair. I myself have had 35 separate surgeries in the last 8 years. I can tell you, it doesn't matter if it's the first one or the 35th one, it never gets any easier. Each and every one is tough. And the night before and the morning of any medical procedure that's invasive is the toughest part of all. You don't need additional stressors placed on you while you're trying to do it. I and my wife personally don't necessarily agree with the concept of abortion, would never consider one, but would fight to the death for an individual's right to make their own medical decisions without outside influences. That comes from language from a Supreme Court decision. I also agree that people have their own right to express their freedom of speech. The question is where do you draw the line. As a great jurist, Judge Learned Hand, once said, "Your right to swing your fist ends where the end of my nose begins." When you want somebody to step back to give you room, you've got a right to that. We all know about our own personal faith. You don't need somebody standing in your face screaming at you when you are going in for what may be one of the most traumatic experiences of your life anyway. Why make it more traumatic? Why cause further psychological impact? I have to support this Bill on moral grounds, on the grounds that an individual's right to make those decisions outweighs another individual's right to express their free speech to the degree that they attempt to impose it on the first person. I think that they had the right to exercise their right to free speech. I've done it myself. I've parked my butt out on street corners with protest signs before, but I don't force it on people. If they want the

information, I'm there. But I'm not gonna get in their face and demand they hear it. I think that's all I really have to say. I just hope you all will support this Bill because I think that it's gonna impact others besides those seeking abortion, and, as the right-to-life movement seemingly gains momentum, others are drawing from their tactics, and that concerns me a lot. Thank you.

CHAIR: Thank you, Mr. Simon. Are there questions from the committee? Thank you for your testimony. Carol Carner.

CARNER: Good morning. My name is Carol Carner, and I thank you very much for allowing me to speak today. Pro-life citizens engage in different types of activities outside abortion facilities. Some block the entrances. Others pray silently. Some people on both sides of the issue engage in shouting matches. But there are many pro-life citizens whose sole purpose is to offer information and help to the girls and women going in for abortion. These citizens are not confrontational. They are gentle volunteers who are truly concerned for the women and the babies. Many of them offer financial help and even offer to adopt the babies, and yet, they attempt to tell the women the truth about development of their babies and the physical and psychological dangers of abortion. This is what I would like you to consider today. Businesses always try to promote their product or service. This is only natural. It is true of any business. Recent news stories have even exposed misleading advertising practices by the medical profession. The fact is abortionists, like persons in any other business try to cast their business in the best possible light. In so doing, they may not be completely honest about their services. To document this statement, I will ask permission of the Chairman to give each member of the committee this two-page packet. The first page is copies from the October 1990 issue of a

magazine called New Dimensions. The psychology behind the news. In this excerpt are statements by former owners of and workers at abortuaries telling how they would purposely color the truth about their business in order, in their own words, to sell abortions. The second page is a copy of a page that Planned Parenthood of the Rocky Mountains used to give to their clients who insist upon knowing about the babies inside them. As you can see, that information is completely biased in favor of promoting abortions. For example, last year a spokesman for Planned Parenthood testified here, in the capitol, that they do not perform abortions until the eighth week. On this page you will see a straight line showing the approximate size of an eight-week fetus. And attached to that page is an actual photograph of an eight-week fetus. Certainly, a client who is given only the Planned Parenthood page would not have any idea of how well-developed that fetus is. Most clients of abortionists do not listen to the people who are trying to offer them information, but consider those clients who are not really sure of themselves, women who really want to know the whole truth, women who might reconsider their abortion if they knew the whole truth, women who, if they learned the whole truth only after having had an abortion, might have a deep, lifelong regret. For the sake of these women, I urge you to reject House Bill 1209. Do not make it illegal for caring people to offer truth and help to these women. Thank you.

CHAIR: Thank you, Miss Carner. Are there questions from the committee? Representative De Gette?

DE GETTE: Thank you Madam Chair. With respect to the second page here, that you say Planned Parenthood gives out to people, I don't see any identification anywhere on this page that it's a Planned Parenthood document. Can you tell me if it's a curent one, if.

CARNER: It's not a current one. It's one they used to give out.

DE GETTE: Thank you.

CHAIR: Thank you. Are there any further questions? Dean Nichol.

DE GETTE: Madam Chair, as you know, Mr. Nichol is the Dean of the D.U. Law School, and I thought he would be back this morning. He was here all morning, Friday. He was going to testify that he's analyzed this Bill, particularly the bubble part of it, and believes it could be constitutional. what I would like to do is, in my closing, I will address some of those constitutional issues rather than taking up your time now.

CHAIR: Okay. Representative, De Gette, I, for one, would appreciate some citings of the cases that he would have testified to.

DE GETTE: Thank you.

CHAIR: Connie Anderson.

ANDERSON: Representative Adkins and members of the committee, I'm Connie Anderson. I'm state coordinator for Colorado NOW, National Organization for Women. I'm here speaking on behalf of the organization. I don' t know how many of you have ever found yourself in a crowd which was out of control. I have on about two or three occasions. One was a New Year's Eve rampage to get into a theater where seats were limited. One was at the Super Bowl that we lost in New Orleans, and I, personally, am never happy with being in that type of crowd. And, in each case, I sought the periphery very fast. These people are frequently out of control. I'm sure that many of you know of people who have been caught up in soccer matches. It's the same thing. Rock concerts, etc. And I bring this out because of the comparison between what happens at some event like that and what happens at Vine Street and other clinics around this nation. I personally have

also been on the line as an escort at the Vine Street Clinic. I have also been on the lines as an escort at Wichita Kansas Clinic. Excuse me. I'm having a very uncomfortable time sitting back on this chair. I think this will pass very quickly. Anyway, at this time, I find that this particular problem is one that is so concerning me that I came forward to speak, came in from Aurora this morning on a very cold day to tell you that I do not think this is persuasion. I don't think this is an exchange of ideas. I do not think it is even intimidation. I think it totally bullying. There is no question that these people are not even really concerned. All they want to do is impose their ideas and their doctrine on others. If someone comes to my door and wishes to talk to me about religious values, I have the option of saying, "Thank you very much. I appreciate your coming by." I hopefully am considerate and that they too are considerate. I find nothing similar in what happens in the abortion clinic. Now, when I have been on the lines down there, I have also seen times when literally - I'm not speaking figuratively - literally, traffic has been stopped on a state highway for the demonstrators to pass out literature to passing automobiles, people who have no concern whatsoever. They're on their way to work. But they have impeded traffic. They have imposed their will on other people because of their zealous feelings about this issue. I also object to the use of the term "pro-life." I find myself very supportive of pro-life. I am so anti-the death of anyone. I see things happening in our world today. I see things happening right here in our own society in Denver, in the metro area, where death is the end result. No, I am not pro-death. I am pro, very pro-life, but I am also very prochoice. I would like to say to you that there is no one who has spoken more clearly on what goes on at the clinic than Ms. Dillingham who was up here previous to me, and I won't go through and

reiterate everything that she has said, but I will tell you that I have observed and also been a part of many of the actions that she has described. I hope you will think very long for the women of Colorado to give them the right to make their own choices, make their own decisions in a relative bubble, if you will, of some peace and guiet and a little serenity as they have to go in to make these decisions. I appreciate your support. I hope you will vote for 1209, and I thank you for the opportunity this morning.

CHAIR: Thank you, Miss Anderson. Are there questions from the committee? Thank you for your testimony. That concludes the testimony on House Bill 1209. Representative De Gette, would you like to sum up?

DE GETTE: Thank you very much, Madam Chair. Madam Chair, you've heard from a number, and committee, you've heard from a number of witnesses over the last several days about, and the testimony has primarily focused on family planning clinics. However, I think it's important to realize the overall purpose of this Bill, which is not directed solely toward those types of clinics, but, rather, towards the right of any patient to seek the medical treatment they need. And I was very grateful for the witness who testified that protest can take other forms of expression: anti-Medicaid, anti-animal experimentation, and so on. But society has to balance the rights of people to protest against the First Amendment right of free expression, and I think we'll all agree that there is a very important right that is important for our sake to protect our people to go into clinics. You have heard testimony that Planned Parenthood has. Only 7% of their procedures are abortion procedures. Yet women going in for potentially life-saving procedures are intimidated and blocked in various ways, both physical and psychological, from entering clinics. It's

against that background that we have to look at how to protect people's rights to enter the clinics and, again I apologize to the committee that Dean Nichol was not able to come back this morning. However, many of you know that I've been a practicing lawyer for 11 years and have done a substantial amount of constitutional work in my practice and, when I initially began to look at an ordinance of this type, I was very concerned about that balancing of First Amendment rights versus people's rights to health care access. I've worked very closely with a number of lawyers to draft a Bill which we believe to be constitutional. People who come to you to say that they have an unrestricted right to free expression are not accurate. It is well established under the Constitutions, both of the United States and of Colorado, that the state can enact reasonable time, place and manner restrictions if there is a societal interest that needs to be, that can be weighed against the First Amendment right of free expression. However, those restrictions cannot be unreasonable. Based against that backdrop, we developed the 8-foot bubble concept in looking at how can we protect the patient's right to be free from the kind of spitting, the kind of intense intimidation and physical threat that they are now, while at the same time protecting the rights of people who are trying to counsel them and talk to them. Eight feet is far enough so that you can't get up into someone's face and stop them from moving. However, eight feet is also close enough so if you say to someone, "Would you like to take a pamphlet?" or you say to them "You're killing your baby. I'd like to talk to you about that," that person can clearly hear and see what you're saying and, if they're interested in receiving your information, can consent, which is why, in subsection 3 on page 2 of the Bill anybody who consents, the bubble is broken. In other words, if someone. is coming up to me as a patient saying, "Will you

take a pamphlet," I reach out my hand to take the pamphlet, that's consent. And they can come closer than the 8 feet to hand me the pamphlet. Similarly, if I walk up to a protestor who's standing on the sidewalk with a sign or whatever and ask for more information, I am consenting to that 8-foot bubble being broken, as a patient, so that can be broken if the patient consents. And I believe that that is a reasonable time, place and manner restriction and, in fact, it is substantially less than many other cases have allowed. I will talk about that briefly. There are a couple of cases which I know some people are concerned about with respect to time, place and manner restrictions. One of them is a Hari Krishna case out of the U.S. Supreme Court from the early 1980's. In that case, an airport completely banned all pamphleting and solicitation of funds in the airport by the Hari Krishnas. The U.S. Supreme Court said that that was impermissible because it was a complete ban on any distribution of literature. However, there are additional cases, including the Hefrin case from 1981, which says airports can control where Hari Krishnas stand to hand out their literature and in that case, in fact, what they said is the Hari Krishnas had to stand in a completely separate part of the airport, which was less busy than where most of the passengers were, and that was approved under the time, place and manner restrictions. In a 1992 case, a recent Hari Krishna case, the Hari Krishnas, oh, that was the one I was just talking about that allowed the restrictions in the airport. In the Hefrin case, that was a case involving a state fair, where they told the Hari Krishnas they had to stand in one place to distribute their literature, that they couldn't circulate through the crowd, and, again, that was held by the U.S. Supreme Court to be a reasonable time, place and manner restriction. In a 1988 case, the Frisbee case, the U.S. Supreme Court upheld a local ordinance which banned all

picketing on public streets outside of private residences. That law was aimed at anti-abortion protestors who were picketing outside of a doctor's home, and the U.S. Supreme Court said in that case that the local municipality could outright ban all picketing in front of that doctor's house. Finally, there are several other localities whose clinic ordinances which are more restrictive that control free speech even more than the 8-foot bubble does, have been upheld. I will talk about a couple of them just briefly. There is a case out of San Diego Superior Court in 1984 where the local ordinance held that 60 feet away was an appropriate restriction. In other words, protestors couldn' t come any closer than 60 feet away and the California Superior Court upheld that kind of restriction. In Pennsylvania, a 10-feet bubble, not an 8-foot, a 10-feet bubble was upheld by the Pennsylvania Court of Common Pleas. In Washington state, 15- and 10-foot bubble ordinances respectively were upheld. And, finally, in Florida, they had a 25-foot buffer zone, and that was upheld by the Florida Circuit Court, so buffer zones substantially larger than the 8-foot buffer zone I'm talking about have been upheld. I pointed out to this committee in my opening statement that the Boulder ordinance which this Bill is partially patterned on has been upheld in the U.S. District Court in Denver by Judge Weinshienk, and Judge Weinshienk said, and she cited to a bunch of the cases, she said that she thinks that what we are doing here is balancing First Amendment against right of expression, and she feels that it's an appropriate balancing. If anyone would like to look at her opinion, I've shared it with a couple of committee members. In short, what we're looking at is a governmental interest in people's access to medical clinics but at the same time protecting First Amendment free speech. I believe this is a reasonable time, place and manner restriction. After extensive

consultation with a number of directors of medical clinics around the state in areas which are not protected by either the Denver or Boulder ordinances, I am convinced that the only real way to give this kind of protection is by use of a buffer zone of some kind. If you look at paragraph 2 on pages, on lines 10 through 12 on page 2, it is a misdemeanor if somebody obstructs people going into a clinic, but it is very difficult, as you have heard many witnesses testify, to determine in a court of law exactly what that is. We need the kind of protection that an 8-foot buffer gives us, and I believe it is constitutional. As you heard, at least one of the witnesses testified, that protestors understand the ordinance in Denver, at least, very well, and they respect it. That gives everybody a little distance. It gives people going into clinics the ability to make the choice of whether or not they want to accept literature or oral counselling, and it gives the protestors the right to also make their point of view known, so for all of those reasons, I believe this is a good Bill. It's needed right now in Colorado, and I would urge you to support it and pass it to the floor with a favorable recommendation.

CHAIR: Thank you, Representative De Gette. I have a couple questions that perhaps you could address for me. In reading the Denver ordinance, there are some distinct differences between the way House Bill 1209 is drafted and the context of the Denver ordinance, for example. And, first of all, in the Denver ordinance, it says that immediately upon request of a second person - in other words, there is an action that's involved by the person who's being handed the leaflet or is being approached, then, secondly, it also says down in there, without limitation, such imperative statements such as "Stop. Withdraw. Back off. Get away or leave me alone," shall be sufficient to constitute a reguest under this section. I

understand what, where the initiation comes from the Denver ordinance. I don't understand the same thing when I read, particularly, section 3 of this Bill. Would you address that, please?

DE GETTE: Thank you, Madam Chair. I will. I considered a section of that nature in my bill. My concern was that if you define in the legislation what consent is, in other words, you know, "stop, get away, back off" and so on, you may actually be restricting someone's free expression like who wants to give a leaflet and the person wants to consent in a different way other than using words. And so, what I did was, I put the burden on them to stay away unless some kind of consent was given, either verbal consent or nonverbal consent. My concern, frankly, is the person who is, who is leafletting. Someone's walking down the sidewalk, and they say, "Here, would you like a leaflet?" The person puts out their hand. That's not any kind of oral, oral indication one way or the other. I'm concerned at least that in the Boulder ordinance and perhaps the Denver ordinance that even though the person puts out their hand, they couldn't break that, that bubble. And so that's why I took any oral requirement on the part of the person gaining access one way or the other, as I think it limits the protestors, it unduly could limit the protestor's right of free expression.

CHAIR: In the Bill as it is constructed now, how do you anticipate that a filing would be made? What kind of provability under Section 3 do you see?

DE GETTE: Basically, what the State would have to prove under - by the way, I intend to offer an amendment to Section 3, line 13 page 2. This was just a drafting error which I actually realized last night. here it says, "No person shall approach," it should say, "No person shall knowingly approach," and I will offer that amendment. So, given that, what the requirement

will be is since it's a criminal statute, if someone is arrested for violation of that Section, what the State would have to prove is that the protestor knowingly approached someone within 8 feet for the purposes of, of protesting or passing a pamphlet, everything that's delineated in Section 3, and the other person did not consent. And the State would have to prove all of those elements, of course, beyond a reasonable doubt.

CHAIR: Thank you. One last guestion, the difference between, another significant difference inmy mind between the Boulder and the Denver ordinances and House Bill 1209 is the civil damages section in the legislation. I guess I have fewer problems personally with civil damages on lines 10, 11 and 12 on page 2, but Section 3 gives me a lot of problems because of the potential chilling effect that you have there. Money does, indeed, and the threat of huge monetary damages does, indeed, have a chilling effect on free Speech.

DE GETTE: Madam Chair. As you know, we discussed this yesterday, and I know an amendment will be offered. I believe it's 002, to strike the civil liability under Section 3 to avoid that chilling effect, and I have no objection to that amendment because the civil liability under Section 2 will still be there, so, again, you know, I don't have any objection to that.

CHAIR: Thank you. Are there any other questions from the committee. If not, there's no further discussion, House Bill 1209 is on the table for action. Are there amendments? Representative De Gette.

DE GETTE: Madam Chair, I move to insert the word "knowingly" on line 13 of page 2 between the words "shall" and "approach."

KNOX: Second.

CHAIR: It's been seconded by Representative Knox. Discussion. Would you please outline why you believe that makes the difference, therein, please.

DE GETTE: Yes, thank you. For any criminal statute, you have to have some kind of culpable mental state, and when we drafted the Bill, if you'll notice both paragraph 1 that starts on page 1, paragraph 2 on page 2, include the, the requisite mental state for "knowingly." It was just inadvertently left out of paragraph 3.

CHAIR: Is there further discussion? Is there objection to insertion of the word "knowingly" in that paragraph? If not, staff will record a Chairman's vote.

KREUTZ: I would introduce 001, if there's second, I would like to discuss it.

PAPER SHUFFLING AND PEOPLE MUMBLING.

MAN: I'm thinking.

CHAIR: All right, it has been seconded for discussion. Representative De Gette, I have discussed this with you, as well. I, I'm really struggling with balancing of the rights here, and I don't have a problem creating the misdemeanor portion of this. The bubble concept, I'm still troubled about how, how we're going to enforce this, and I offer this amendment as just an alternative, and I guess I would be interested in your comments about the language. To explain to the Committee what I've tried to do here. I've tried to expand the scope of (2) to include some sections of our current menacing statutes under this misdemeanor action and, also, if you'll look at (c) there, and I will just read from 18-9-111, which is the section that I had asked drafting to pick up here. And, explain to you, the provisions that would be carried forward here, (c) under harassment is strikes, shovesr kicks or otherwise touches a person or subjects him to physical contact, so if you see down

there in lines 11 and 12 on 001 it does reference that language which in the parenthesis (a) there. In parenthesis (c), the language is "follows a person in or about a public place," and (h) is "repeatedly insult, taunts or challenges another in a manner likely to provoke violent or disorderly response. I think under our harassment statutes, we do have some ability and that that language is also proven in court to have some validity in First Amendment issues, and I guess I would just offer this as an alternative. It does strike Section 3 which is the bubble concept. I know that that is a very important concept from Representative De Gette's perspective, and I would just appreciate some comments on that, Representative De Gette.

DE GETTE: Madam Chair. The "bubble" concept is a very important concept to the Bill because, under current municipal ordinances in many areas they do have harassment statutes. They have noise ordinances, and so on and so forth. It has been difficult for local law enforcement agencies to enforce under some of those statutes because it is a little unclear as to exactly where and when a violation occurs. A lot of it is subjective. We, and, and what you've basically done is take my language from paragraph 2 and attempt to expand it, however, it does get, get rid of the bubble concept which I disagree with, and, also, there's some language in here which comes very close to what I think, I'm just reacting because, of course, this morning is the first I've, but I think it comes very close to a content-based restriction, which, of course, would be unconstitutional under the First Amendment. When you talk in lines 6 through 8 here about "makes physical contact with a person or spits on a person," people would say, I think that protestors might make the argument that you're limiting only certain kinds of activities and not other kinds of activities. The other thing I'd like to point out is I've had some people say to me they're concerned

about the bubble concept, but I haven't, I haven't been presented with any cases where a bubble concept was ruled to be unconstitutional, particularly an 8-foot bubble which I think is not very big, considering how, how, the kinds of bubbles that some of the other locations have up to 60 or 80 feet. And so, given that, my research would indicate that a bubble is in fact more clear and more easy for protestors to understand or law enforcement to enforce and gives everybody more clearly delineated rights, so, you know, I would be happy to take, to take your draft and discuss it with some of the constitutional experts I've been working with, when this goes to the floor, but my gut reaction is it doesn't solve the problem that the bubble concept is designed to solve. I haven't heard any case law indicating that a bubble would be unconstitutional, and you may have some (inaudible) for vagueness and some content-based restrictions that could be a problem.

CHAIR: Thank you, Representative De Gette. I think perhaps one of the reasons that you've not seen citations of cases is that most of the challenges that have been made are to municipal ordinances and have only been at the federal district level. We're still looking, but to my knowledge, none of these have been challenged beyond that level, and, b., in the case of some of them, there have been no challenges to them at all, which is what creates some of the problems with trying to interpret how far you can go and how far you can't go.

DE GETTE: Madam Chair, I want to point out that I have turned up, I have turned up. I agree with you. It's kind of a new concept in constitutional law, and that's part of the reason we don't have a settled body of law on it, but we still do have a number of state court decisions and some federal court, lower district court decisions like the one in the U.S. District Court for the District of Colorado, which seemed to uphold, which

have in fact explicitly upheld the ordinances. I haven't found any that do not uphold it, and that's my only point.

CHAIR: Thank you. Representative Friednash.

FRIEDNASH: Thank you. Is your concern basically with respect to subparagraph 3's constitutionality?

DE GETTE: Representative Friednash, the constitutionality as well as an issue that I will address in a second amendment which is the chilling effect of suits based on the bubble as well. I think that monetary damages from the bubble concept when I have as much reservation about the concept itself gives me even greater heartburn.

FRIEDNASH: (Inaudible.) Madam Chair. Let me point out, too, that, like Representative De Gette, I do have some background in constitutional law, too. I was a former Assistant Attorney General with the State of Colorado. Prosecuted and handled over 100 cases on the appellate level. I've reviewed the case law on this case and, while no case in the Supreme Court is directly interpretive of this type of an issue, some things and guiding principles I think are clear from the litany of cases. First, that the First Amendment is not absolute and that the right to communicate one's view at all times is not always a given in any manner that's desired. There are places where the constitution excepts reasonable time, place and manner restrictions, whereas here, there are alternative channels of communication, such as this bill, the bill deals with the consent. So, whether it's express or implied, where there's consent, there's nothing to stop these people from distributing or communicating their views. Further, there's nothing in this Bill which would restrict the ability to go door to door or to the open market place of ideas to communicate those ideals, and I think that under this provision, they can clearly hand the pamphlet to anyone who wants it. Furthermore, I think the

compelling state interest which the Supreme Court would look at if this Bill, or any other similar Bill, makes it there, and perhaps it will, is the ultimate issue of providing safe access to clinics. And I think based on the testimony today that there's clearly an interest, a compelling state interest for that in this case.

CHAIR: Representative George.

GEORGE: Thank you, Madam Chair. I have a question for our two constitutional lawyers. Let's assume that we're wrong about that and that this becomes law in Colorado, and is accepted and the Supreme Court says that the 8 foot bubble concept is an impemissible restriction, what is left with your Bill? What will the law have left in it to help solve the problem that we've been dealing with?

CHAIR: Representative De Gette.

DE GETTE: With paragraph 2 on page 2, assuming that was only the bubble portion that was overturned, I'm sure it's been your experience as well as mine, Representative George, that we never try to second guess what a court is going to tell us about, about what we're doing, and all we can do is, really do the research and, and give our best educated guess. So, my sense is that we would be left with paragraph 2.

CHAIR: Representative George.

GEORGE: On a little different subject, whether or not this Bill passes, Representative De Gette, tell me what your feeling is about the present application of some of the harassment statutes and some of the menacing statutes dealing with these kinds of problems (inaudible).

CHAIR: Thank you. Representative De Gette.

DE GETTE: Thank you, Madam Chair. The problem with harassment and menacing is, is since the proof, since the proof is on the prosecution and since the standards are not as clear as,

say, the 8-foot limit, it's more difficult both for the protestors to know whether they're breaking the law, and, also, for the people gaining access to press charges, and that's always a very difficult kind of thing in protest-type of situations for them to know. Now, some protestors where they make extremely loud noises, use bullhorns and so on, you heard people testify, have been prosecuted in some municipalities on noise ordinance violations, because, of course, they can take their little machine out and measure the noise, and that's a quantifiable violation. The problem, as I understand it, is there are only a couple of those monitors in the state and so, and, also, not all the localities ordinances like that, and you can't always enforce these kinds of things against the noise ordinances. This just gives a more clear definition to what we're talking about, which I think would help everyone.

CHAIR: Representative Jordan, and then Representative Friednash.

JORDAN: Let's assume this bill becomes law in Colorado, and we're out at the Vine Street Clinic on a particularly difficult day. The number of people composed to (inaudible). How will this bill handle the situation where a person thwarting the clinic setup protest (inaudible) and (inaudible) individuals (inaudible) to (inaudible), of course, after (inaudible). (Inaudible)this one person who (inaudible) sets the other person up to be in violation (inaudible)?

DE GETTE: Well, I have two responses to that. The first one is I think that would be consent on the first person's part, if they're trying to gain access to the clinic and they knowingly go within eight foot of the protestors, I think would be consent. Also, the, the statute is directed towards someone going towards, someone trying to enter a clinic. So, the protestor would not be knowingly approaching the person entering the

clinic. So I don't think you would meet either of those portions of that subsection 3. Secondly, with respect to trying to set someone up for civil liability, I think that's the topic of Amendment 002 that the Chair is offering, and I agreed that I think that that would be an improvement to avoid that kind of a setup for purposes of a civil action. Because for a criminal action, I don't think that would ever be prosecuted because of the "knowingly" element and the "consent" element. The first civil lawsuit, that's a more difficult question because, of course, we don't require a conviction to bring a civil lawsuit, so I've agreed to take care of that problem.

CHAIR: Representative Friednash.

FRIEDNASH: Thank you, Madam Chair. To get back to Representative George's initial question, in my view if the bubble is challenged constitutionally, and the court finds that it is unconstitutional, I think we're left with what is contained in 001, anyway. I think that subsection 2 of 001 is already in the bill first and the crimes of menacing and harassment is still, in my view, prosecutable, so I think you're still left with this in the law. Based upon what we have, there's concern if it is tested constitutionally, at least we've had a ruling on it and know whether or not it's Constitutional and provides more protection and safe access to clinics.

CHAIR: Thank you. Representative Kreutz, you had seconded 001. I would ask your permission to withdraw lines 13 and 14 because they have been separated out to amendment no. 2. So members, if you would just scratch lines 13 and 14 from that amendment. 'Cause I, what I had hoped to do was to allow the committe to deal with these as separate issues, rather than a single issue together. Representative De Gette, and, perhaps, Representative Friednash, because I had written it down as you were talking, the secondary issue on the bubble

concept is who is harmed, the issue of who has an action in connection with the civil liability. Could you explain to me whether or not you believe that the escorts or the clinic operators will have an action, or if you believe that it is simply the individual who is attempting to enter the clinic for services?

DE GETTE: If you look at page 3, lines 12 through 18, what it says is, someone can recover damages or obtain injunctive relief from any person who commits or incites others to commit the offense of preventing passages, or passage. My reading of that and in general of the law is that you only have a cause of action if you've been affected by it and so, anybody who has been barred from passage would have a cause of action. Now, I suppose you could construct a situation where they're barring a health care worker from passage, too, if they' re trying to walk into the clinic. Anyone who's trying to walk into the clinic, and is being barred would have a cause of action. Of course, they'd have to prove all of the elements. But, I think that's important, because these people's safety is important to worry about, too. I will say that I don't think, I know for a fact that the Director of Planned Parenthood or some administrative person or some person or some organization could not sue under this on behalf of people who were being blocked. Only someone who was actually blocked could sue.

CHAIR: In the case of Denver and Boulder, Representative De Gette, how many actions have there been? Have there been misdemeaner charges filed under both municipal ordinances?

DE GETTE: Madam Chair, yes, there have been some filed. I don't know how many there have been. I believe you heard several of the witnesses testify that the effect of the ordinance has been actually what I would hope to have which is everybody knows about it so they stay 8 feet away, and,

therefore, there haven't been as many problems or confrontations as there were in the past. Ruth Hopfenbeck testified about that on Friday, and then Nancy Jenkins and Diane Dillingham testified about that today, so I think in a way what it's done is it's made everybody sort of mind their manners. And, and it hasn't required a lot of charges to be brought.
CHAIR: Thank you. Is there further discussion on 001? I know there is objection so staff please call the role.
STAFF: Representative Benavidez.
BENAVIDEZ: No.
STAFF: Representative De Gette.
DE GETTE: No.
STAFF: Representative (inaudible).
LADY: No.
STAFF: Representative Friednash.
FRIEDNASH: No.
STAFF: Representative George.
GEORGE: No.
STAFF: Representative Kaufman.
KAUFMAN: No.
STAFF: Representative Keller.
KELLER: No.
STAFF: Representative Knox.
KNOX: No.
STAFF: Representative Kreutz.
KREUTZ: No.
STAFF: Representative Morrison.
MORRISON: (Inaudible).
STAFF: Representative Rupert.
RUPERT: No.
STAFF: Representative Tucker:
CHAIR: He is excused.

STAFF: Representative Adkins.
ADKINS: Yes.
CHAIR: That amendment failed 11 to 1. I would move 002. Is there a second?
FLEMING: Finish it.
CHAIR: Seconded by Representative Fleming. Committee, this is the issue that, um, I had pointed out earlier. I think that in the sense of trying to allow civil damages that, the bubble concept gives me more problems than the civil damages from the Class 3 misdemeanor, although I'm not certain that we would not have been better off to just allow injunctive relief and leave it at that, but this amendment strikes the reference to paragraph 3 as an element of the civil damages section on page 3, line 18. So, if you just go to page 3, line 18, it simply leaves parens 2 and strikes parens 3.
DE GETTE: Madam Chair.
CHAIR: Representative De Gette.
DE GETTE: As I said before, I think this is a good amendment. I have no objection.
GEORGE: Madam Chair.
CHAIR: Representative Kaufman, er, George. I'm sorry.
GEORGE: Would someone clarify for me how, on page 3, lines 4, 5, 6 and 7, which is subparagraph 6 and provides for civil liability in addition to criminal penalties, relates to the remedy you are seeking with your amendment which also deals with civil liability or civil damages?
CHAIR: Representative De Gette.
DE GETTE: Representative George, it made sense to me at the time the Bill was drafted. I'd have to look at that to see exactly what that section is. If we need to conform that to make it conform with the amendment, we should do that.

DE GETTE: Representative George, I believe the answer to that question is that it is simply the language from a construction standpoint on lines 4 through 7 is simply referring to the cause of action that is created in 13-21-106, which starts on line 11, and that it does, it is not a conflict to remove the portion relating to para 3, that that does indeed strike a cause of action for that section. Staff has pointed out to me that there is a possibility that we may need to address at a later date if the bill proceeds, the language engaging in prohib ted activity near a healthcare facility on lines 16 and 17 in some other manner, but at this point, I will not be offering an amendment to do that.
CHAIR: Is there objection to 002? If not, staff will please record a unanimous vote. Are there further amendments to House Bill 1209? If not, House Bill 1209 is on the table for action. There is a statement of no fiscal impact. If it is the committee's wish, there is an appropriate motion to the committee of the whole.
KREUTZ: I second that.
CHAIR: Is there a motion?
KREUTZ: I move to send this bill to the committee as a whole.
CHAIR: Representative Kreutz, and seconded by Representative (inaudible). Is there further discussion? Would staff please call the role.
STAFF: Representative Benavides.
BENAVIDES: Here.
STAFF: Representative De Gette.
DE GETTE: Here.
STAFF: Representative Fleming.
FLEMING: Yes.
STAFF: Representative Friednash.
FRIEDNASH: Yes.

STAFF: Representative George.
GEORGE: Yes.
STAFF: Representative Kaufman.
KAUFMAN: Yes.
STAFF: Representative Keller.
KELLER: Yes.
STAFF: Representative Knox.
KNOX: Yes.
STAFF: Representative Kreutz.
KREUTZ: Yes.
STAFF: Representative Morrison.
MORRISON: Yes.
STAFF: Representative Rupert.
HOOPER: Aye.
STAFF: Representative Harper is excused. Representative Adkins.
ADKINS: Representative De Gette, I yes, but with the caveat that I intend to continue working on this Bill. I still am looking for further information on Section 3, and I think that I know you've attempted to balance here, but I'm not convinced it's as balanced as what it could be. Thank you.
DE GETTE: Madam Chair, I look forward to working with you on that, too.
CHAIR: House Bill 1209 passes the committee (inaudible)of the whole 12 (inaudible). The hearing is complete. Committee, we will take a brief three-minute recess while we get Representative Romero from upstairs and then proceed with that bill.

- - - End of Committe Testimony - - -

House Floor Debate

STAFF: (Inaudible) concerning the protection of a person's access to healthcare facilities.

CHAIR: Representative De Gette.
DE GETTE: Thank you, Madam Chair. I move House Bill 1209 and the committee report.
CHAIR: Would you move the report separately, please?
DE GETTE: I'll move the committee report at this time.
CHAIR: Continue.
DE GETTE: Thank you. Um, probably, what the committee, what the committee report did is, as you know, this Bill is concerning the protection of people's access to healthcare facilities. The first part of the Bill establishes criminal liability if someone violates the provisions of the Bill which I'll talk about when we get to the Bill. Section 2 on page 3 of the Bill provides for civil liability for violation of this statute, and, in committee, we discussed the issue of whether it would be appropriate to have civil liability for the, for what I'm calling the "bubble" portion of the Bill, the portion which prohibits people from coming within 8 feet of someone gaining access to a clinic unless they consent, and we agreed that it would be more appropriate for the civil liability to simply attach to paragraph 2 on page 2 rather than paragraph 3, so the committee report simply takes out the civil liability for the bubble portion of the Bill. The criminal liability, which is in the Bill, remains, and I would urge your adoption of the committee report.
CHAIR: Is there discussion to the committee report? If not, that is the question. All those in favor, oh, Representative Jerke to the committee report.
JERKE: Thank you, Madam Chairman. At this time, I want to move the first and only Jerke amendment to the judiciary committee report. Members, what this does is on page 2 of the Bill strikes paragraph number 3. This is the portion that deals with, I guess, the bubble, the 8-foot section, and my reason for

doing it is because other than that I think you got a pretty good bill. In other words, the portion that deals with paragraph 2, knowingly obstructing, detaining, hindering, impeding, blocking another persons' entry, I think that makes good sense. I think that ought to be against the law. I think it ought to be a misdemeanor. But I don't think that the other portion in paragraph 3 which gives people this invisible 8-foot bubble out there I guess makes any sense from the point of view of enforceability and, of course, once again, that great constitutional question. I don't want to bother getting into that argument, this afternoon. We' ve already had great constitutional arguments. This is another great one on First Amendment. She can probably outargue me, the Bill's sponsor. She understands the Constitution far better. Everybody understands that there are undoubtedly questions as to the validity of that. What I am going to point out, though, is that if we take that portion out, we've still got a pretty good bill, I think, at that point, and one that I will support if it does not have paragraph 3 in it. And, again, what that does, is takes out the 8-foot portion the idea to it that people would still have the ability to do all their First Amendment rights, giving somebody a leaflet, perhaps talking to someone. I think we probably have already some laws on the books dealing with harassment and that type of thing, but at this point, I renew my motion and I would urge your support on it.
CHAIR: Discussion to the Jerke Amendment. Representative De Gette.
DE GETTE: Thank you, Madam Chair. Probably, Section 3 on page 2, the "bubble" portion of the Bill, is the core of the Bill, and I would urge you a "no" vote on the Jerke Amendment. It is clear that an 8-foot bubble around people entering a health clinic is constitutional. I've practiced

constitutional law for 10 years. I've researched it, and I believe it's constitutional. Furthermore, the Bar Association has researched this. They believe it's constitutional. The Boulder ordinance, which has been upheld in the U.S. District Court for the District of Colorado, they've said it's constitutional. You've gotten some information today that says that bubbles even bigger than this one, in other words restricting people to come from, coming from even farther away, are constitutional, and I think it's just clear that it's constitutional. The reason it is so important to have an 8-foot buffer zone is if you look at paragraph 2 which simply says it is a misdemeaner to knowingly obstruct, detain, hinder, impede or block another person's entry, is what happens is, particularly with respect to family planning clinics, but, also, in other kinds of healthcare situations, protestors come right up to patients, and we heard some compelling testimony about this in the committee. They yell at them. They taunt them. They commit slurs. They shove dead cats in their faces. They show terrible placards. These are people, many of whom are making very, very sensitive health decisions, and many of them who are simply seeking medical treatment which could potentially be lifesaving, such as cancer treatment or routine medical examinations. Handicapped people have been harassed in this way. What, what various municipalities have found is that when they do not have a bubble-type law on the books, a law that is contemplated in paragraph 2, begins to solve the problem but it does not fully solve the problem because it does not keep people from going right up into the face of patients and I think, and I know many of you share my concern, that it is critical for us to protect the access of patients going into healthcare facilities, no matter what they're going into those facilities for. So, for that reason, I would urge a no vote on the Jerke Amendment.

CHAIR: I would ask the committee not to discuss whether it is constitutional or not. We could debate that all day, because we all are of different opinions, but let's get to the issue. Representative Kreutz.

KREUTZ: Thank you, Madam Chairman. This Bill is not about choice, and it's not about pro-life. This Bill is a "get out of my face" bill, and when I was - I'm not gonna say how old - but when in 1968 when I had a Nixon button on - and I did wear a Nixon button in 1968 - I had people come at me, rush at me, spit at me, throw things at me, and back then, I thought, you know, I believe in freedom of speech, but I don't believe in this kind of thing, and what I would like to do is take this as a first step and next year come back and keep the KKK out of my face and keep a lot of people, you know, just give everybody space. We all need it.

CHAIR: Is there further discussion on the Jerke Amendment? Representative Clark.

CLARK: Yes. I have to speak out in support of this amendment because I think what we're doing here is we're trying to either really address the issue of free speech. I think we're putting a prior restraint on free speech by taking this approach. I think we have adequate law currently to address the situation and we do have a constitutional clause which says no special law shall be enacted where a general law can be made applicable to the situation.

CHAIR: Representative Keller.

KELLER: Thank you, Madam Chair. Well, I would ask a no vote on the Jerke Amendment. This is not a matter of free speech. This is abuse. This is verbal abuse. This legislation wouldn't even be before us, today, if there had been respect from one person to another. We're talking about verbal abuse and verbal harassment, and I am in support of the Bill, and I am

opposed to the Jerke Amendment, and I would ask that you be, too.

CHAIR: Representative Fleming.

FLEMING: Against (inaudible).

FLEMING: Thank you, Madam Chairman. I, too, would ask for a no vote. In committee, as Representative De Gette told you, we heard a lot of testimony from different people saying, I've frequented a lot of these clinics, but I don't frequent them for the sake of an abortion. I frequent them to have a gyn exam, have a pap smear done, to be treated for cancer treatments and what have you. We also heard much testimony, especially from Planned Parenthood, that stated that only 7%, 7% of the people who frequent their clinics are there for an abortion. So we have this 93% of other people in this category out there that are going in for other types of healthcare services. And I'll tell you I'm one of those 93% out there, and I utilize their clinics for my annual pap test every year, and I do that because I get good service, and I also utilize it for another reason, because this is my place of employment and my salary is so generous out there that I can't afford to go to the private physician. What I can afford is the services of a planned parenthood clinic to provide me that annual healthcare exams that we, as women, all need in our society, that can prevent us from some very serious illnesses later on, and I have frequented these facilities and had these people in my face screaming all sorts of atrocities at me when I'm there just to practice good health care practices to secure that my life will be a long and healthy one, and I would submit to you, folks, that I don' t wish to be further harassed in this fashion, and neither do the other 93% of folks out there that are freguenting these clinics, and so I, I would agree with the statements of Representative Kreutz. I don' t want these people in my face, and I have a right to a

certain amount of private space. Please vote no on the Jerke Amendment.

CHAIR: Further discussion. Representative Clark, then Pfiffner.

CLARK: Thank you, Madam Chair. If you'll read carefully section of this Amendment speaks to this 13 and 20. If those are left in, it becomes a misdemeanor to pass out pizza coupons in front of Denver General Hospital. Ah, I think we're taking an approach here that is improper. I urge you to support this amendment.

CHAIR: Representative Pfiffner.

PFIFFNFR: At this moment, I don't know how I'm gonna vote, but I'm, I wanna ask this membership to consider what we're hearing, and that is if that if you don't like the content of the speech, that's a reason to be against having them speak it, but that's the whole issue behind the First Amendment, and keeping all kinds of speech available. Spitting in someone's face is assault, but telling somebody something they don't wanna hear isn't a reason to shut those people up. Still I don't know how I'm gonna vote on this, but let's not decide what content is proper. When people speak it.

CHAIR: Representative De Gette.

DE GETTE: I'll just sum up on this amendment. We're not telling people what they can say. They can say anything that, that they want.

And we're not preventing them from talking to anyone. In fact, they can do it from 8 feet away.

The 8-foot limit was designed so that someone could clearly communicate, and, also, if you look at page 2, paragraph 3, it provides that someone can consent to have the person come closer to talk to them more closely or to hand them a pamphlet or whatever. We believe that it is constitutional and it is essen-

tial. Kindergarten teachers pull kids apart when they begin to have fights, and we think it's appropriate to do in this situation as well. I'd ask for a division.

CHAIR: Representative Jerke.

JERKE: Thank you, Mr. Chair, Madam Chairman. I'm going to ask for an "aye" vote on it. I, I sincerely believe that this is the part of the Bill that may be unconstitutional. I know we're not supposed to address constitutionality, but that probably in and of itself is unconstitutional to suggest that we can't address the Constitution.

But, anyway, that point, I urge an "aye" vote on this amendment. I think you've got some enforcement potential, obviously the constitutional problem. I don' t know whose gonna carry the tape measure out there. I think we already have lots of laws on the books regarding harassment, regarding assault. I find what people do at these clinics reprehensible as well, but we do have a stronger calling out there, and that's the Constitution, and it's also the enforceability ability out there of our laws, and I don't think this is gonna be enforceable, so I urge an "aye" vote.

CHAIR: Representative Jerke, I wasn' t asking, saying that you couldn't mention the Constitution. I just don't want to be debating it back and forth. Representative Chlouber.

CHLOUBER: Thank you, Madam Chairman. Representative Jerke, I'm with you. I don't want to debate the Constitution. It's not a constitutional issue between us, but it is a common sense question between us, and I realize that's not a criteria mandated on this body, but all we're saying in here, in paren 3 of this Bill, is "stay back 8 feet." I don't care what side you're on. If you're pro or con, stay back 8 feet. And that gives everybody their right to speak their piece. You can say what you want to 'em. Either side of the question just gives us 8 foot, and you know

that certainly isn't happening. This addresses that problem. that is a very, very real problem. So, I'm gonna ask the defeat of the motion of Representative Jerke and that we support this Bill. Thank you.

CHAIR: Representative Clark.

CLARK: Thank you Madam Chair. Again, briefly. If you read the way it is written, no person shall approach another person within eight feet of that person, et cetera. If you're simply passing someone on the sidewalk and you happen to be wearing some kind of a campaign sticker or button that they don't like, you are in violation of this, and guilty of a misdemeanor. I think we've created a situation that is indeed going to be unenforceable and I ask for a yes vote on this amendment.

CHAIR: Representative Chlouber.

CHLOUBER: Representative Clark, the only reason you would want this out of there, if you wanna get in my face closer than 8 foot and argue your case, that is the only reason you wouldn't want this in the Bill. Now, I don't want people coming up to me with their protests, with their whatever, and telling me or anybody else in the state of Colorado what they should or should not do, their particular values. Just stay back 8 foot. You know that's happening, particularly at the clinics that are in question, here. This solves that problem.

CHAIR: Further discussion. Representative Kaufman.

KAUFMAN: Thank you, Madam Chairman. I must disagree with Representative Clark. This deals with access to medical clinics. If you have a campaign button on like you're supporting a candidate for office, and you're walking down the street, this has no application to That, and, it's limited, again, to access to medical clinics, and I'd just like to also state we have already two statutes in place in this state that regulate

obstructing people's going into places. One is 18-9-107, obstructing a highway or other passageway, and the second one is 18-9-109, which is interference with staff, faculty or students of an educational institution. That was passed during the Viet Nam war, and I' m sure it had to do with the riots and people blocking off buildings and such, and you can't do that on a campus here, in the State of Colorado. I'm going to vote no on the amendment. Thank you.

CHAIR: Further discussion on the Jerke Amendment. That is the question, the adoption of the Jerke Amendment, and there has been request for a division. Would all those in the chamher not eligible, not entitled, to vote please sit down. Those in favor of the Jerke Amendment, please stand, remain standing. Please sit down.

Those opposed. The Chair is not in doubt.

The Amendment fails. Representative De Gette.

DE GETTE: I would just move the committee report.

CHAIR: We need to adopt the committee report. Is there any objection to the committee report? To the committee report. Representative Duke.

DUKE: Thank you, Madam Chairman. At this time, I would move, dot one, as a substitute to the judiciary committee report.

CHAIR: Continue.

DUKE: If I might continue, Madam Chairman. We have been talking about the constitutionality of this. Believe me, Representative De Gette, I really understand the kind of frustration some of the people who are motivating your law must feel. I feel many of the same frustrations when other classes of people are in my face, such as the homosexuals, as they frequently do. I feel the same disgust for that. And I feel the same need for protection from that. But I don' t want to live where we start excluding specific classes of people from this.

Yolanda, I've asked you to that show one handout, a handout. This phrase, I think, sums it up pretty clearly. The General Assembly shall not pass local or special laws in any of the following enumerated cases: granting to any corporation, association or individual any special or exclusive privilege, immunity or franchise, whatever. This doesn't say, "unless they're entering a healthcare clinic." This doesn't say, "unless they're going in for an abortion." This doesn't say, "unless they're going in for a gyn examination." What it says is "you may not grant a class of people, a single class, special privilege." And you might say, "What does this really mean? How is the court going to interpret this when they get it before them, because the Bill is clearly unconstitutional." If you look in the detail under Article 5, Section 25, when is class legislation prohibited? Dunbar v. Hoffman. when the effect of the law is to prohibit the carrying on of a legitimate business or occupation while allowing other businesses or occupations not reasonably distinguished from those prohibited to be carried on freely. This Bill does that. That's when class legislation is prohibited. We've heard references to Boulder and Denver. Why is it okay for Boulder and Denver to do this, but not the State? Does that seem unusual to people? It does to me. If you look a little further, special legislation is not forbidden in respect to incorporated cities or towns. A court ruling on this: Mayor of Valverde v. Shack. On this very legislation. You cannot prohibit it for cities and towns. The one that is prohibited from passing this is the State. We can't do it. Boulder can do it. Denver can do it. Colorado Springs can do it. It's the State that cannot do it. We already have case history on that. A further case on this particular statute, statutes which prescribe different punishments for the same violations committed under the same circumstances in like situations are

void as violative of the equal protection of the laws. Vanderhoof v. People. This Bill provides for much more criminal offenses for a very select single class of people. We look further under the test, the court case for that particular statute. A test of a special legislation - when is it special? when an enumerated prohibition is indicated if the legislative classification of a real or potential class or is it logically or factually limited to a class of one? Absolutely. This Bill applies to a single individual. You can't do this. The courts have already ruled. We don't have to wait for a test case on this. When does it not violate this section of the Constitution? When the statute creates several classes of potential beneficiaries. And more than one entity could be so classified over an extended period of time. Not only does this Bill fall within the span of Article 5, Section 25, but the test cases throughout the courts have supported that particular portion of this Constitution. And, I further remind you, we all swore an oath, every one of us, to uphold that Constitution. You cannot do both. You cannot vote for this Bill and maintain your oath to the people of Colorado because not only the Constitution is prohibiting it, but the test cases on that particular statute are prohibiting it. I encourage adoption of the amendment.

CHAIR: Representative Kaufman.

KAUFMAN: Thank you, Madam Chairman. I'd have to disagree with my colleague on his reading of the Constitution. If you will read, follow what's up on the screen, there. It says the General Assembly shall not pass local or special laws in any of the following enumerated cases: granting to any corporation, association, or individual. This is not a law granting any, it's not a local or special law granting anything to a corporation, association or individual. This is a law that protects every citizen in the State of Colorado, all of us, so it's not to any

particular individual, and it's not a special exclusive privilege, immunity, or franchise. The only thing it could possibly come under would be privilege, and we're not talking about a privilege. We're talking about a right, a right to free access, to medical care, without being harassed. So the Constitution of the State of Colorado does not prohibit this Bill. Thank you.

CHAIR: Representative De Gette.

DE GETTE: Thank you, Madam Chair. This the kind of stuff lawyers love. I have a memo which I did not pass out to everybody because I wanted to be in the spirit of Representative Gordon's bill. Since I am an attorney I didn't want to waste a lot of paper. But basically the Colorado Bar Association, Bill of Rights Committee, as well as Dean Nichol of the Colorado Law School, both have opined that this kind of time, place and manner restriction is constitutional for the reasons Representative Kaufman just talked about, this article of the Constitution doesn't really apply to what we're talking about here, which is the rights of everyone. Furthermore, there is a Colorado Supreme Court case under this article, which has upheld time, place and manner restrictions of this type.

I have challenged the opponents of this Bill, time and time again, to show me any place in the country where a bubble bill of this nature has been held to be unconstitutional as a violation of the First Amendment. There aren't any. Instead, as I said, the Boulder ordinance on which this statute is modelled has been upheld in the federal court in Colorado, and, if you look at the memo that you received earlier today, a number of much broader restrictions have been upheld in the courts. Basically, the constitutional argument is an excuse to kill the Bill by people who think it's appropriate to get into people's faces. The Bill is constitutional. It's an important public right of access to

health clinics, and I would urge, again, a no vote on this amendment and, again, I would ask for a division.

CHAIR: Representative Duke, and then Clark.

DUKE: Well, I guess unfortunately I simply disagree. This Bill is not for everyone. That's the problem. It's not for everyone. It's for people who are entering these healthcare facilities, primarily for an abortion. That's what it's for. It doesn't apply to me. It doesn't keep a circle of freedom around me when, when we have homosexuals stand right in our face in the basement of this Capitol, as they have done. It doesn't keep an 8-foot bubble around my car when that happens. That's the problem with this Bill. If it were broad enough to allow that kind of individual freedom, that would be great. That would be wonderful if that's what it said. That's not what it says. This singles out a very specific class of people and gives them a special privilege that is not shared by the remainder of society. Those ordinances that Representative Kaufman told you about, he left out one very important detail, and that is that they're general in nature and apply to everyone, not a single class of people. And I ask you this. Suppose the Bill is in place and suppose that person walks up and that person violates the 8-foot bubble. Is it all right, then? This Bill is not well written. I really empathize with what she's trying to do. I can understand the frustration that that must be. But this is not the way to do it. Write a bill that does this for everyone, and I'll support it. I encourage adoption of the amendment.

CHAIR: Representative Clark.

CLARK: Thank you, Madam Chair. I think there are four points I'd like to make in support of this amendment. Number one, this Bill really does constitute no less than a prior restraint on free speech. We already have adequate laws on the books to deal with trespass, harassment, blockades and vandalism.

Item number three, this unfortunately applies to all forms of speech as Representative Duke pointed out. Again, if you were simply walking by a hospital or a healthcare facility and you happened to have some kind of a political sticker or slogan on, that is offensive to someone, you're committing a misdemeanor, simply by expressing your free speech, simply by walking down the sidewalk in front of a healthcare facility. Unfortunately, this bill is written so broadly that it could also apply to leafletting activities. For instance, if nurses were on strike outside a hospital, this could well apply to them. Again, I agree, with Representative Duke, this is not the way to deal with the problem, and urge support of the amendment.

CHAIR: Is there further discussion on the Duke Amendment? There has been a division requested. Anyone not entitled to vote, please sit down. All those in favor of the Duke Amendment, please rise and remain standing for the count to be taken.

Please sit down. Those opposed, please rise.

The Chair is not in doubt. The Duke amendment fails.

To the Committee Amendment as amended. Representative De Gette, did you have anything else to say about that?

DE GETTE: No, Madam Chair. I'll move the committee amendment, or committee report and ask for an aye vote.

CHAIR: We did' t amend it. I'm sorry. We didn't amend it. It's been so long. The Judiciary Committee Amendment is the question. All those in favor, please say "aye."

LOTS OF PEOPLE SAYING "AYE."

Those opposed, no.

The Amendment passes to the Bill as amended.

DE GETTE: Thank you, Madam Chair. I think we've had a lengthy debate. Everybody knows my position on this. It's a

matter of human decency, and I would just ask for an "aye" vote on the Bill.

CHAIR: Is there further discussion? Representative Duke.

DUKE: Well, obviously, I'm gonna ask for a "no" vote. I wish I could take credit for the following phrase, but it comes to mind when we consider issues like this. It was mentioned by a former legislator, standing in these chambers. "We killed 'em before they are born. We killed 'em when they are infirmed. We killed 'em when they are old. My God, what kind of place is this?" I encourage a "no" vote.

CHAIR: Is there further discussion? There has been a division requested. The question is the adoption of House Bill 1209 as amended. All those in the chambers not entitled to vote, please sit down. All those in favor of House Bill 1209 as amended, please rise and remain standing.

There is not a doubt. The Bill passes.

Senate Committee hearing on 3/3/93.

In attendance:

Cassidy
Groff
Hopper
Lacy
Mutzebaugh
Pastore
Ruddick
Blickensderfer
Wham - Chairman
Senator Feeley, Sponsor

CHAIR: Senator Feeley will describe the bill and the committee has a chance to ask questions. We have five persons who will testify for the bill. I will then take five against and we will then, if there is time to hear everyone in some detail we

will. Otherwise we will ask you to make a (inaudible). Senator Feeley, tell us about House Bill 1209.

FEELEY: Thank you, Madam Chair, members of the committee. I'm here today to present to you House Bill 1209. This is a bill which has generated a great deal of interest, but, actually, not a lot of controversy. I think that when you read the Bill and when you hear the witnesses, you'll realize that this is a Bill that is actually very limited in scope. This is not a bill about abortion. This is not a bill about inf ringing on First Amendment rights of any individual. This Bill involves walking up a sidewalk to a healthcare facility and involves a matter of common courtesy. The purpose of the Bill is expressed very well in the intent, and that's to insure that citizens have access to healthcare facilities in order to obtain medical counselling and treatment. The Bill is actually based on two ordinances which are in effect today, one in the City and County of Denver and one in the City of Boulder. Both of those ordinances have been in place for quite a period of time, and both of them have had a what I feel is a very good effect. They've gone a long way to alleviate instances of violence, instances of violence and unpleasant instances when one is seeking access to a healthcare facility for medical counselling or treatment. The Bill's, the Bill's an attempt to avoid confrontations, and the Bill strikes a very delicate balance. The Bill was drafted very carefully to preserve the rights of an individual to exercise their First Amendment rights and preserve the rights of the individuals to obtain medical counselling and treatment. The witnesses will testify about the need for this legislation and the types of confrontations that have occurred in the past and types of confrontations that this Bill is designed to address. One of the witnesses from Planned Parenthood, Mr. Gary Jamieson, will talk about confusion that

results off and on the sidewalk outside of a healthcare facility. I'm sure Mr. Jamieson will testify that of the services provided by Planned Parenthood in the State of Colorado, only 7% of those services involve abortion services. Most of the patients of Planned Parenthood facilities are there for other services - to obtain pap smears, cancer screening or birth control counselling. The purpose of this Bill is to try and make, to try and enact some common courtesy in order that both parties can be protected. As to the Bill itself, the Bill is really divided into two parts. Section 1 of the Bill, which has 2 subparts, creates, declares that a person commits a Class 3 misdemeanor if they knowingly, if they knowingly obstruct, detain, hinder or impede another person's access to a healthcare facility. Well, I'm sure this committee knows for a Class 3 misdemeanor, the maximum penalty would be a six-month sentence and a $750 fine. That's the maximum. That's not the likely, that's the maximum. The second part of Section 1 deals with what we refer to as the "bubble." This means that a person commits a Class 3 misdemeanor if, within 100 feet of the front door of a healthcare facility, they approach a person entering that facility knowingly with the intent to hinder or delay that entry into the healthcare facility. The most important part of the Bill is contained in this section, I believe, and there is some safeguards written in there. One does not, does not commit, is not guilty of a misdemeanor if the person approaching the facility gives their consent. Now, consent can be given in a number of ways. If someone approaching the facility reaches out to take a handbill from a sidewalk protestor, that's consent. If someone says, "Yes, I'd like to hear more about your position," or "I'd like to receive some education about what services are provided inside that facility," that's consent. If someone says, "I'd like to read your sign," or "I'd like to read

your literature," that's consent. And the Bill, in Section 1 - the second part of Section 1 - specifically addresses that consent.

The second part of the Bill, in Section 2, provides a civil remedy. It provides that an individual can seek damages or injunctive relief from a person who violates or who knowingly commits or incites another person to commit the offense of preventing passage to a healthcare facility. Now, Boulder has had a similar ordinance in effect since I believe it was 1986. There are a number of constitutional questions that have arisen, and I'd like to advise the committee that the Boulder ordinance was in fact challenged in the Federal District Court here, in Denver. In 1987, it was determined that the Boulder ordinance which is in fact a little bit more restrictive was held to be constitutional. Representative De Gette, who has worked very hard on this Bill, and I have both looked at the constitutional implications. We have not found a single case from around the country which found a similar bubble-type ordinance to be unconstitutional. On the contrary, we found numerous cases which found bubble ordinances sometimes far more restrictive, to be constitutional. The Supreme Court of the State of Washington found constitutional a 100-foot limit outside of healthcare facilities. There was a court in San Diego that upheld a 60-foot right-of-way which in fact put sidewalk protestors across the street from the healthcare facility. This Bill imposes an 8-foot facility. 8-foot is about the distance, in fact, is just about the distance that I sit from Senator Wham right now, and I think that Senator Wham and I would certainly not be impeded in any discussion that we might want to have, even if this microphone wasn' t here. I think that 8-foot is a very reasonable distance. It prevents a more heated confrontation, yet it preserves the right of the protestor to exercise their First Amendment rights. I believe that this Bill

is very narrow and really deals with an issue of common courtesy. I hope you'll support the Bill. I'll be happy to answer any questions you might have.

CHAIR: Questions from the committee. Thank you. Then, we will call Gary Jamieson. Would you identify yourself, please?

JAMIESON: My name is Gary Jamieson. I'm the Associate director for Planned Parenthood of the Rocky Mountains. I'd like to thank you for allowing me to speak. I've been with Planned Parenthood for 19 years, and I oversee, among other things, the accounting department, the support activities for Planned Parenthood.

CHAIR: Would you pull the mike closer a little bit.

JAMIESON: In addition to the accounting and other responsibilities that I have, I am responsible for clinic security and facility security for our organization. Planned Parenthood of the Rocky Mountains supports House Bill 1209 for the 60,000 patients that we see every year. As referred to earlier, only 7% of those patients are abortion patients. 93% of the patients that come into our office are there for some other reason, reproductive health care, counselling areas or other services. In fact, we're working very hard to expand the breadth of services that we're providing. Most of those clinics have had picketing at one time or another and most of those clinics have patients that could tell you stories about what kinds of services are provided there and what kind of protests they've come up against. People protesting outside and, for that matter, the general public can't tell what reason someone's going into a clinic. I've personally seen the protestors from both sides of the fence. I've been to the Vine Street Clinic on many, many Saturdays over a period of years, and I can tell you that their sidewalk counselling is not designed or doesn't appear to be de-

signed, anyway, to enlighten someone. It seems to be more to intimidate and it is a very imposing experience to come up against that group, particularly if you're feeling at all uncomfortable about what service you're going in for. If you're at all uneasy about what you're going into a clinic for or for that matter if you just don't know what's going on and you see a bunch of people on the sidewalk yelling and shouting and so forth, it's not going to make for a pleasant experience. We think that 8 feet is a reasonable distance, it's roughly two arms' length away, and in conversations with strangers in public areas, it's just about the distance that you'd be comfortable standing at. The protestors are going to try to say that they are merely sidewalk counsellors helping troubled young women make up their minds. would encourage all of you to go see what that's like in person. We've considered it to be one of the catalyzing experiences for our staff to come into a clinic being protested and just see what it feels like. I can tell you that, from personal experience, it's one of those things that makes you believe even more strongly in the work that we dod. I can also tell you that it is the kind of thing where there's a little infant between you and the protestor, it tends to deescalate the confrontation and, frankly, that's what we're after. The posture in places without this kind of ordinance is for the protestors to get in your way, or do in-your-face protesting and in the Denver clinic, where this ordinance has gone into effect, it had the, a definite deescalation of tension, which is what we're after, so, I guess, in the end, what I'd like you to do is support 1209 and if I can answer any specific questions, I'd be happy to.

CHAIR: Questions for the witness. Thank you very much, Gary. Sandy Curry. Identify yourself for the tape, please.

CURRY: I'm Sandra Curry. I'm Director of the Grand Junction Women's Clinic. I have been the Director of the clinic

for the last three years and have been employed at that clinic for more than seven years, now. I'm very much in favor of this Bill being enacted to provide a buffer zone for people when they come in. Among some of the experiences that I've seen at our clinic where we haven't had the strong violent threat. A lot of it is a very subtle kind of cruelty, in fact. For instance, a nurse who was at my clinic once upon a time, she was at my clinic and just recently employed, as she drove away on her first day there, a picketer leaned into her car as she had (inaudible) to slow and to go onto the street and called her a baby-killing bitch. That's not something that, even though she worked there or what the circumstances were. I can only conclude that this is the kind of action any woman who's there goes through. Without a doubt, as do most clinics, we provide low-cost care for many things, pap smears. We've been the only clinic in the State of Colorado until recently that offered depoprovera. We had a great many people who come to our clinic for that service and, without a doubt, the picketers had no reason to know what was going on. And some of the other circumstances where I've known picketers misjudged why a woman was there and I felt a really strong, powerful agony for the woman involved was a woman that had a child that she was carrying and was a wanted child die in the womb. She was coming to our clinic to have the dead fetus removed, and the picketers stood outside and called her "murderer" and names and didn' t even give her the privacy to reach a clinic and find good medical help in a way that made her safe. These people should not be allowed to do these kinds of things for any reason. Thank you.

CHAIR: Thank you very much. Ruth Hopfenbeck.

HOPFENBECK: Thank you. My name is Ruth Hopfenbeck. I am a volunteer for Planned Parenthood of the Rocky Mountains. I am an escort at the Vine Street Clinic on

Wednesday mornings from 7:30 to 9:00. I am also a member of the Board of Trustees of Planned Parenthood of the Rocky Mountains. I have been an escort for over three years, and I'm here today to give you a sense of what happens five days a week at the Vine Street Clinic. I will also give you two examples of where I personally have benefited or have been involved when a patient has benefitted by the bubble ordinance since it's taken effect in Denver. Five days a week, at the Vine Street Clinic, at least five, a minimum of five, and more like 12, 13 to 15 protestors are walking up and down the street. One of the first things a patient sees when they arrive is a large sign saying, "This is the killing place." The protestors are walking with their bloody fetus signs, walking slowly across the driveway as cars approach and making it not as easy as it could be to have access to our parking lot. I'd like to say that we are very fortunate at the Vine Street Clinic because we do own the space south of our clinic where the patients are urged to drive in and park. We also are separated from the sidewalk by a low wall and this makes our situation far better than that of clinics throughout the State of Colorado. One, the first, what patients are hearing as they enter are, the people are calling them murderers. They're calling us murderers, killers. They accused me of murdering my children. They call the situation a holocaust situation. They call those of us who escort guards from Dachau. But our role is to get the patients in as quickly as possible. We ignore the protestors and I think handle the job quite well. In one instance that occurred, one of the patients parked her car - in this case, it was a truck - on the street, rather than coming into the parking lot. Patients are told to come into the parking lot as a matter of safety and ease of access to the clinic, but they often don't hear. They don't, as you all know, if you're listening to your doctor or you're in a crisis situation,

you often don't hear all the instructions. I was asked, after the patient entered the clinic, if I would mind bringing her car in. I went out with another escort. I had difficulty starting the car, the truck. Within moments, the protestors were all surrounding us and the vehicle, slapping signs against the window shield, and I was able to say, "Eight feet back, please." And they obliged. I then moved the car, which was even more difficult than starting it, and finally, after much effort, I couldn't even get it into the lot, but parked it on the sidewalks again, and we were again surrounded. We couldn't get out of the vehicle because it didn't open from the inside. The doors didn't open from the inside. And, again, they surrounded us, but we were able to ask them to move back eight feet, even though they taunted us and said, "You have no idea what eight feet means." Another instance, a patient and her mother entered the clinic from a gate on the east side of the property. Again, they were confused. They did not bring their car into the parking lot. Immediately, they were surrounded by the protestors, signs in their face, taunts, yelling. The gate stuck, which prolonged the moment. We, the escorts, moved to her as quickly as we could and asked the protestors to please stand back eight feet. They did, and we got her in. As we got into the vestibule, the mother of the patient turned to me and said, "I cannot believe this. My daughter was raped." These are just some of the things that we are faced with. I urge your support of 1209.

CHAIR: Any questions? Senator Feeley.

MAN: Thank you. Mrs. Hopfenbeck, you mentioned in your testimony that there was talk about. not knowing what 8 feet is. Protestors didn't know what 8 feet is?

HOPFENBECK: I think they do. Yes, I think they, they know what eight feet is, that they do, you know, they're taunting us, about a lot of things. Thank you.

CHAIR: He was here. Thank you. I don't see Mark. Oh, there you are! Mark Simon.

SIMON: Madam Chairman, members of the committee. Thanks for having me here to speak today. I've heard a few people talk about this Bill from the abortion perspective, and I'm sure that everybody else who testifies today will talk about it from that perspective, but I'm not going to. I'm gonna put a different perspective on this Bill. This Biil is supported by the two largest organizations serving people with disabilities in this State, representing about 150,000 people. The disabled community supports this Bill for a coupLe of reasons. First is we have now identified two instances in the nation in the last six months where people, others other than those seeking abortions, were prevented, accosted, etc., while entering a medical treatment facility. The first, I'm sure you'all have heard about, and it's the gentleman in Pittsburgh about a month ago who received a baboon liver transplant who was dying from hepatitis. In his case, they had to give him the baboon liver transplant because if they'd given him a human liver, it would have been eaten up. These don't. In his case, he was beset by animal rights activists. The second incident was about five months ago, in Florida. A gentleman in a wheel chair entering a medical facility down there was beset by anti-Medicaid protestors, of all people. They ended up knocking him out of his wheel chair. The ironic part about it is he wasn't a Medicaid patient. They just perceived he was 'cause he was a wheel chair user. What it brings to light is the fact that as Operation Rescue and those types of organizations gain more publicity and higher profile, others begin to copy their tactics and techniques and that, of course, brings great concern to our community because people with disabilities tend to be targets. We are seen as vulnerable. We are seen as easy to push around.

I, myself, for those of you who don't know on the committee, I was hurt in January of 1985. I had a 27-ton mobile home fall on top of me, breaking my pelvis in 36 places and almost severing me in two at the waist. I've been on the table 35 times since then being pieced back together again. I have received eight experimental procedures, the first of which saved my life, and I'm the first survivor of it. Imagine if at any point in time any of those procedures had been denied to me. I either would have died or the quality of life that I currently live would have been substantially reduced, so that's a great concern to me. What this Bill really does is, is one of the authors of the Americans With Disabilities Act, to steal a phrase that they have used, it "codifies courtesy." That's really what it does. It codifies common human courtesy. You have to weigh First Amendment rights and society's rights against the individual's right to privacy. Most people don't know this about the Roe v. Wade decision. The result of Roe v. Wade was Jane Roe got an abortion. What the Supreme Court decision addressed was an individual's right to make their own medical decisions in privacy without outside influence of others. I, myself, do not personally support the concept of abortion except in the most extreme cases. But I would fight to the death to protect somebody's right to make that decision for themselves, without hesitation. As the great jurist, Judge Learned Hand, once said, "Your right to swing your fist ends where my nose begins." I think that's appropriate here. Does a protestor have the right to force their viewpoint on you by gettin' in your face, screaming at you, shovin' their signs at you or do you have, is your right to ask them to give you your personal space, to stand back and scream versus doing it in your face, is that a greater right? I've been on the table 35 times. I can tell you, it never gets any easier. Every time you have an invasive medical procedure, it's

just as tough as the first time, and the toughest period of time is when you're on your way to that procedure, when they're taking you to the operating room, when you're walking into the clinic, whatever. You don't need additional stressors placed upon you when you are dealing with what for most people is the most stressful time in their entire lives. In closing, the final point that I'd like to make is, this Bill is gonna save us money. I resent the fact that, according to the Denver Police Department's own numbers, every time before the Denver bubble bill was put into place it cost me, the taxpayer, $60,000 every day that Operation Rescue was besieging one of the Denver clinics. This Bill is going to make law enforcement easier. It's gonna reduce the net number of police officers actually required on site to keep those clinics open when these events occur, and it's gonna put money back in the budget which, in light of Amendment One we all know, is real important right now. I think that's all I really have to say. I could go on on this topic for some time, but I won't. The bottom line is, I don't think that this Bill just applies to those seeking abortions or even just seeking services at abortion clinics. Without bills like this, I think we're gonna see this kind of effort grow, increase and spread to other areas, and that's of great concern to me, and we certainly need to discourage that. Thank you.

CHAIR: Thank you. Are there questions? Thank you Mark. Diane Dillingham.

DILLINGHAM: Madam Chairman, members of the committee, my name is Diane Dillingham, and I am District Coordinator for Colorado Republicans for Choice. I'm not here testifying this afternoon in that capacity, however. I was invited to testify because I was a volunteer escort at the Vine Street Clinic in 1988 before Denver had the bubble ordinance. Being an escort in those days was frightening. Let me assure

you we were not afraid of words, we were not afraid of pamphlets, we were not afraid of signs. We were afraid for our physical safety. The goal of the protestors as it always was was to shut down the clinic. Our goal was to preserve the right of the patients to receive legal treatment that they were entitled to. Most Saturdays, we would arrive at the clinic somewhere around 5:00 a.m. If we arrived after that, we were sometimes unable to get inside. Some of the staff and volunteers would actually spend the night at the clinic if they were expecting a large protest that day. The protestors would arrive in caravans, having met at a central location earlier in the morning. We would never know what their target was. We would never know where they were heading until just before they arrived. They were very well organized, and they'd even decided at the meeting prior to their showing up which of their members were to be arrested that day for trespassing. Their first action was always to block the entrance to the driveway to the clinic. This forced the patients to park on the street. Then, as escorts, it was our job to meet the cars and escort the patients into the clinic, sometimes with their friends, sometimes with their families. We were issued special vests that we wore to identify us as clinic volunteers and to differentiate us from the protestors. We would surround the patients and their families and walk them into the clinic, and the people trying to stop their access would surround us. They would push and they would shove. Sometimes, tempers were lost, and they would kick and they would bite, and I came home many days bruised. They would try to physically pull the patient out from within our midst. It was frightening. It was dangerous, both for the escorts, the patients and their families. After all of the patients were into the clinic, then the actual protest would begin. They would climb over the low wall that you've already heard described in

front of the clinic and they'd rush towards us. By this time, the police were there. Many times, they were there on mounted horseback. They used the K-9 corps to turn back the tide of the protestors. Some of the protestors were arrested for trespassing and taken for hooking to the waiting police buses, but only the people who actually crossed over the line onto Planned Parenthood property were the ones that were arrested. The only way that the other people, the ones who had attacked us on the way in, could be prosecuted, were for us to swear out an individual warrant charging them with assault. We were very often encouraged to do that, but when there are two crowds of people, one opposing, one trying to walk the people in, it wasn't as easy to identify exactly who had done what, who had thrown a punch, or who had pinched or who had kicked. It's a very confusing situation. Patients were also encouraged to prosecute people who'd harassed them, but the patients by doing so would have lost their anonymity, and their anonymity is one of the most important things that we try and protect in these kinds of situations. You've heard a lot about the fact that the people opposing the law are merely trying to educate and pass out pamphlets and they're there to be helpful. This rings very hollow to me, because we had as much trouble getting the patients out of the clinic after the treatment as we did getting them in. It was as hard to get them to their cars after they'd been in the clinic for whatever treatment they were there to receive as it was bringing them in. We had the same kind of problems. We had to surround them and help them. We had to protect them. The anti-choice person movement is aware that they are on the losing side of the choice debate. Legally, they've lost the battle. But they are well aware that the legal right to a procedure is very, very different from having access to that procedure. The new tactic is to accept the legality of

abortion but to make this procedure impossible to obtain. I ask you to please support the clinic access law so that all people can have safe access to clinics, free from physical intimidation and harm. Thank you.

CHAIR: Any questions? Thank you. Jeannie Hill.

HILL: Thank you, Madam Chairman, and members of the committee. I would like to pass out some things.

CHAIR: Give them to the (inaudible). Thank you.

HILL: Can I hold this? Three weeks ago, The Denver Post quoted the sponsor of this Bill, Representative De Gette, as saying, and I quote, "Today in Colorado the right to unrestricted healthcare is in jeopardy." Can someone show me the law in Colorado that says anyone has a right to unrestricted healthcare, especially when it is at the expense of other people's freedom? Does an injured patient in the back of an ambulance have an unrestricted right for his driver to ignore stop lights? Or does the driver have to consider protecting the rights of other people before he speeds through the lights? I think we all know that we're talking about abortion here, so let's get to that. Is elective abortion, is elective abortion so important to the State of Colorado that it's going to be singled out and given more privilege than actual medical emergencies? In other words, will the ambulance driver still have to consider other people's rights while those seeking elective abortion will be trained to take away the rights of others, including myself? If this is the case, then Colorado will officially establish that elective abortion is of greater value in this state than freedom of speech in the public arena, verbally or through the passing out of literature. I believe that this law was built on two false premises, number one that healthcare, or in this case abortion, is not currently restricted in Colorado. It is restricted, and it always has been. Call my husband and ask him for an abortion

and he will refuse you. That's a restriction. Call an abortionist and, if you don't have the cash, he will refuse you. That's another restriction. The majority of voters in this state said they will not pay for someone else's abortion. That's another restriction. The number two false premise is that abortion patients in Colorado need more laws than they already have for a speedier access to abortion. Where is the proof or the evidence that the State of Colorado needs another law to protect anyone's access to abortion? The fact is that those seeking abortions have never chosen, never chosen, to my knowledge, to use the existing remedies of law, either disturbing the peace, disorderly conduct, harassment, those sorts of things, to file a grievance. Either they had no grievance, or they chose for themselves not to file one. The fact is that out of approximately 38,000 abortions done by Planned Parenthood since 1985, 38,000, none of these patients have chosen to file any kind of charges against people offering help or literature, and that's probably a drop in the hat compared to the total abortions in this State since 1973. Find a case. The people wanting this law are the abortion providers the and volunteers who have unsuccessfully tried many times to bring charges themselves and intimidate us off the .public sidewalks. In their desperation, and after having failed the court, they now beg the legislature to further their own cause and meet their own selfish needs. Again, they want to make choices for others in order to benefit themselves. Abortion workers know better than anyone else that they will still have the right to grab a woman's arm and lead her toward the abortion while other citizens like myself will be severely restricted and burdened in offering literature to that same woman. Where is the balance here? There is none. Those people working for abortionists know that their stranglehold methods combined with this bubble law will

together virtually guarantee that no one gets to see our literature. Again, where is the woman's choice, and where is the balance? Representative De Gette suggested that the bubble ordinances in Boulder and Denver are working because no one has filed a complaint under these laws. The fact of the matter is that these laws are totally unenforceable. Let's face it, who really wants to carry around an 8-foot yard stick every time they go to the doctor? Secondly, who will ever know about this law. And, thirdly, who in the world is going to believe it? Seriously, the only person I knew who ever used this ordinance was a Planned Parenthood volunteer and she, the case was either dropped or she lost the case. These bubble ordinances have not been used because they are useless. I think it would be appropriate before you pass this obscure law for you to ask Representative De Gette to play out a scene for you and the rest of us, and I'm serious about this. Play out a scene right here to give us a minimum understanding of how we are to behave when a person with a permit to hold our license to freedom of speech decides to withhold our freedoms. We honestly don't know what to do. In reality, what do I have to do in order to avoid going to jail under this law? We may need a weekend seminar to learn where all the public easements are in this State and whether they're different from where the sidewalks exist. We all need to know how this new law would work out in the real world. But if this law, Bill, becomes law, the high cost of abortion will have just gone higher in Colorado. Now, many others, including myself, will have to pay, too, with our First Amendment rights, because Colorado, will be going to establish that elective abortion is of higher value to the state than my freedom of speech, or anyone's freedom of speech. As I understand it, and I' m not an attorney, the standard review involved in federal court constitutional fundamental rights

cases is that of strict scrutiny. This State must prove that the law was necessary to promote a compelling, paramount government interest. If that cannot be proven, this law is constitutional, unconstitutional. So I ask you to consider this one question: How will you prove that this law is in the least necessary to the interests of Colorado's government when you can't find one complaint filed in the courts by a legitimate user of the medical services. Please consider as well what this kind of law will cost the taxpayers of Colorado. I've discussed this matter with attorneys who believe that this Bill poses a substantial threat to both the Colorado and United States Constitutions. I'm advised that if this Bill becomes law, a cause of action will be available to me to challenge the constitutionality of this law, and, like Roe v. Wade, I don't need a denial of my rights to challenge this law because the law itself will be a threat to me every time I go out on a public sidewalk within 100 feet of a medical facility. Thank you.

CHAIR: Are there questions? Senator Ruddick. Thank you Madam Chair, members of the committee.

CHAIR: (Inaudible).

RUDDICK: (Inaudible.)

HILL: If an officer believes that there is some kind of crime that makes some (inaudible). In any event, (inaudible) because (inaudible) you're going to (inaudible). But any individual seeking abortion, to give that person a permit, (inaudible). In my opinion, (inaudible).

CHAIR: Senator Ruddick.

RUDDICK: (Inaudible). (Inaudible) other parts (inaudible). (Inaudible) trespassing (inaudible) some way (inaudible) area (inaudible) if it's (inaudible) area. I know, (inaudible) degree of (inaudible). I don't (inaudible) what is (inaudible).

HILL: Because a public sidewalk has always been a traditional forum for constitutional protest.
CHAIR: Senator Ruddick
RUDDICK: Well, then, why can a police officer do that? It doesn't have to do with what he thinks. (Inaudible) been there (inaudible) setoff (inaudible) you believe (inaudible).
HILL: That's right. But he must be justified, and if you don't, you go to court and you fight it out in court and he sits there and says I was justified (inaudible). The judge says, "I believe so, too. (Inaudible) but at least you have the right to stand there and (inaudible) yourself (inaudible).
MAN: (Inaudible)
CHAIR: Senator Ruddick
RUDDICK: So, what concerns you is that in this legislation you've got an 8 foot area by law we're defining that as a threat rather than the officer saying that's a threat.
HILL: My threat is that this thinking and, by the way, we had some clarification. Was the civil damages part of this removed in the House Committee, or was it not, because I think it appears in the latest version.
FEELEY: Madam Chair.
CHAIR: Yes. Senator Feeley.
FEELEY: No. The civil penalty provision appears in Section 2 of the reengrossed Bill. However, if I could elaborate on that a bit.
CHAIR: Yes.
FEELEY: There was a House amendment to clarify that. If you have a copy of the Bill in front of you, there was a House amendment that said that the civil penalties for the civil damages would arise only in the event of a violation of, and the House added Section 18-9-122(2). That, in fact, would refer you, if you look at the previous page, page 2, line 11, so that

provision of Section 1. what the civil penalty does not address is the language appearing at paren 3, from line 14 on page 2 through line 21. If I could just explain that a little bit. That we didn't want to do because we recognize the importance of the First Amendment right for sidewalk protestors. What we didn't want to do is cause someone to invite the opportunity for a civil lawsuit. We didn't want to have someone walking up to a clinic saying, "Hey, I've got a great idea. I've got a good lawsuit. I want to invade that 8-foot zone myself in order that I might be able to precipitate a civil lawsuit." So the House Amendment which I thought was very well thought out excluded that potential from civil remedies. However, the civil remedy does arise if a person knowingly obstructs, detains, hinders, impedes or blocks another person's entry to or exit from a healthcare facility as provided in subsection 2, so, I hope with that clarification and that explanation of the House Amendment, that issue has been addressed.
LADY: (Inaudible.)
CHAIR: Thank you. Senator Blickensderfer.
BLICKENSDERFER: Thank you, Madam Chairman. And this is really more directed to Senator Feeley. There was discussion by this witness and some of the prior witnesses about the costs that have been incurred, in particular. I know Mark Simon talked about police coverage for $60,000 a day and our current witness is talking about more litigation expenses and that sort of thing. With the two current bubble ordinances in Denver and Boulder, are there significant decreases in the need for police, or is there any sense that there is a need or less need for police protection?
CHAIR: Senator Stevens.
STEVENS: Thank you, Madam Chair. Senator Blickensderfer, from my understanding of Mr. Simon's

testimony, prior to the institution of the bubble ordinance in Denver, that the police costs were in the neighborhood of $60,000 a day to deal with Denver's situation a real problem. Since the passage of the bubble ordinance in Denver, there's been a minimization of police problems (inaudible). These expenses have not (inaudible).

MAN: Thank you.

CHAIR: Any further questions?

HILL: (Inaudible).

HILL: I think (inaudible) law into your hands. (inaudible) ordinance, because (inaudible) no (inaudible). (Inaudible) court (inaudible) have been acquitted (inaudible) case (inaudible) been filed against us (inaudible). Again, we (inaudible) court (inaudible) yes or no to a (inaudible).

SOMEONE ELSE: (Inaudible) this Bill.

SOMEONE ELSE: (Inaudible).

LADY: (Inaudible) in Denver (inaudible).

CHAIR: All right. Thank you.

LADY: Thank you.

CHAIR: Oh, and I'm sorry, I'm going to have a problem with the last name. The first name is Michelle

RADER: Rader.

CHAIR: Rader. Thank you.

RADER: My name's Michelle Rader, and I would like to thank you for giving me this opportunity to speak to you tonight. I believe the way this law is written it's meant to intimidate and harass pro-life persons. It says nothing about Jews for Jesus or animal rights activists. This language, this law was designed to get rid of us, to throw us right out of the arena. If this law goes through, it would stop some people from picketing for fear of getting arrested. A lot of people are like me, still in college. Soon I'll be out looking for a career, but

who's gonna hire me with 10, 15, 20 pages of arrest record. If you take away our freedom of speech, we cannot inform or educate people. The girls and women already have legal recourses. They can file harassment charges without this law. This law isn't meant to help anyone. Its only real purpose is to hurt pro-life persons, to keep us from speaking out. You give women the right to freedom of choice, but how can we expect a woman to make an informed decision when they only know one side of the story. A choice is going to Baskin-Robbins and choosing between chocolate, walnut or rocky road ice cream. Abortion is a major decision. Unfortunately, most women have to make this decision alone. I did and I know I'm not the only one. As soon as I said the word "pregnant," he was history, never to be heard of, from again. I was scared and all alone. I was too embarrassed to ask for help. If this law had been in effect then, I would not have got any information at all and gone through with my abortion because the only people that were on my side were the people at the abortion clinic. They knew exactly how I was feeling and what to say to make it all better. In my heart, I knew abortion was wrong, but it didn't matter. I had never taken responsibility for my actions so why start then. One of the major reasons I did not go through with my scheduled abortion was a picture I was given while I was pregnant. This was the first time I had ever seen the other side of the story. I think I speak for a lot of women, myself included, when I say abortion is the only way out because of it's all I knew. In Sex Education, I was not taught about adoption or the fetus or anything like that. All I learned about was venereal diseases and abortion. The people supplying the pamphlet helped me make my choice. I got an informed decision, I got information from both sides, and I made an informed decision that my son and I could both live with. Be-

cause of this picture I was given, right there, this little boy got a chance at life that he would never have had. I gave him life, and out of love for my son, I gave him a better life. On January 5th of this year, I gave him up fc: adoption. There is not a single day that goes by I do not miss my son. Seeing pictures of him so happy makes me realize what I did was the least I could do. when a person is standing out on the ledge of a ten-story building, you call for help. You call the police or an ambulance or you try to talk to them yourself. You don't just assume they know what they're doing, and in the end the choice is theirs, but I'm not gonna stand by and watch and watch them jump and walk away and pretend nothing ever happened.

CHAIR: Are there questions? Senator Lacy.

LACY: How did you find out? I mean, how'd you get the information you were on your way to an abortion clinic?

RADER: From the pro-life people.

LACY: And they were on the sidewalk? Where were they when you got the information from them?

RADER: They – I was on my way. They were not right in front. They were walking from their cars to go down there.

LACY: And they approached you with literature?

RADER: And, you know, a lot of people think these girls know what they're doing. I speak for myself and I know I'm not the only one. I didn't know what I was doin'. It was the only thing I knew. I didn't want to have an abortion, but I didn't know anything else.

CHAIR: Thank you. Senator Peterson.

FEELEY: I just want to follow up on Senator Lacy's question. (Inaudible) information available you held out your hand?

RADER: No, I didn't. No, I was too embarrassed. No, I would have never done that. I wanted everybody to think I

knew what I was doing. I knew I didn't know what I was doing, but

FEELEY: When you first met them, were they as far as Senator Wham is from you right now?

RADER: No

FEELEY: You didn't see them until they'd come that close?

RADER: I didn't know who they were, no.

CHAIR: Senator Mutzebaugh.

MUTZEBAUGH: When did they give you the material?

RADER: Pardon me?

MUTZEBAUCH: When did they give you the material?

RADER: I was 11 weeks pregnant, when I was 11 weeks pregnant.

CHAIR: You were going to the clinic?

RADER: Um hum.

MUTZEBAUGH: Tell me what happened.

RADER: I had scheduled an abortion. I was gonna have an abortion, and I just went down, and I was walking from my car into there, and some people were step, gettin' out of their cars, and I did, they didn't have time, they didn't have anything. I didn't know they were prolife people. And I, I was cryin'. I mean, I was just, I can't say hysterical, but I was cry, I mean, they knew what I was there for. It was obvious.

MUTZENBAUGH: Did they walk up to you and ask you to take the information?

RADER: Oh huh. They asked me if I knew what I was doing, and I said yes.

MUTZENBAUGH: Did you?

RADER: And then I broke down and started cryin'.

MUTZENBAUGH: And they offered you the information?

RADER: Uh huh.

MUTZENBAUGH: And you took it?

CHAIR: Thank you very much. Philip Faustin?
FAUSTIN: Madam Chairman.
CHAIR: Is that correct?
FAUSTIN: It's Faustin. May I ask (inaudible) a question?
CHAIR: No. I'm just calling them as they signed up.
FAUSTIN: May I (inaudible).
CHAIR: Surely. Mr. Watwood?
FEELEY: Madam Chair.
CHAIR: Yes.
FEELEY: Madam Chair, I'd just like to introduce Mr. Watwood who is a friend of mine and was also my able opponent in the recent election, and it is only by accident that I am sitting to his right at the moment.
LAUGHTER:
WATWOOD: Thank you, Madam Chairman, for allowing me to testify to the committee. It's always a pleasure to be next to Michael. We've enjoyed punching each other around for two or three months this last fall, but he certainly has been a worthy opponent. I'm coming here to testify with regard to H.B. 93-1209. My name is Lynn Watwood. I am an attorney in the State of Colorado registered to practice. My law offices are downtown at 1999 Broadway. I am affiliated with a group called Robert A. Lees and Associates. I'm here on behalf of myself. I have been previously involved with organizations that are, been involved with freedom of speech, freedom of petition, freedom of religious expression. I've been four, at least four federal district court cases with regard to protecting those First Amendment rights. I recently, in 1990, won a case against the Denver Election Commission for violating the constitutional rights to clearly petition their government. Petitioners who wanted to refer the gay rights ordinance back to the people in the City and County of Denver. Judge Zita

Weinshienk agreed with me that, that, that the Election Commission had violated their rights. I was an attorney involved with the East Otero School District about five years ago where Judge Matsch agreed with me that the East Otero School District, by not allowing high school students to disseminate literature, be it political or economic or religious had violated the First Amendment constitutional rights of students and issued a permanent injunction against the East Otero School District. This past year, I was involved with the American Constitutional Law Foundation against Meyer, and Judge Nottingham agreed with me that the requirement that the Secretary of State Meyer was imposing upon state law with regard to disqualifying signatures on petitions that were not properly or technically acknowledged properly by, by circulators violated the constitutional rights to clearly petition your government under the First Amendment, and to also the freedom of speech to communicate your position to the voters so they could vote on it in the general election. So that background, I'm not saying I'm the greatest expert in the world, but I do have some background of fighting these things out in court and persuading judges in federal district court and I could say that what is attempted, whether nobly or not in this case with regard to protecting people entering and egressing from health facilities, I think it's completely unnecessary because the laws are already on the books with regard to trespass, assault and harassment. Getting beyond that hurdle, then we'd ask well, what would be the test of this law? In spite of that. In the constitutional test applied by the Supreme Court for the United States is a tripartite test where they must show, the people that want to restrict or impose prior restraint on constitutional rights to freedom of speech, must show that there is a compelling state interest. Well, first of all, they must analyze what the

forum is, whether you're talking about a public forum, a traditional public forum, a quasi-public forum, a limited public or private or quasi-private or public forum, so it's, it can get a little bit complicated. But then, the second thing that the people, that the court analyzes is whether there is a compelling state interest and, if there is a compelling state interest, then the prior restraint on that First Amendment right must be tailored in the narrowest proscribed manner to give the greatest freedom, otherwise, for the protection and exercise of that right. Thirdly, if they get over that hurdle of compelling state interest, then the restriction must be reasonable with regard to time, place and manner and must give the people that otherwise exercise their rights an alternative means of exercising those rights to the fullest extent possible. I think, and implicit in all that part of that three tripartite test is whether or not the legislation is vague or overbroad, and the Supreme Court, and I know there are lawyers on the Committee, and I know Michael is, will tell you the Supreme Court or courts with appellate jurisdiction, and, sometimes, trial courts, will very often, instead of getting to the nitty-gritty detailed substantive issues, if they find something is overbroad or vague on its face, will rule that it's unconstitutional. The definitions that are there in this, uh, first of all, with regard to compelling state interest, Senator Feeley said it is not legislation that is being single, that is singling out, pro-life people or against organizations like Operation Rescue, but I think all the testimony here, the gravamen of it, the preponderance of it, is talking about abortion clinics. On top of that, he said that this is a courtesy statute only. It's just a courtesy of people to go to health clinics. Well, courtesy is not a compelling state interest, not anything I've ever read in any of the law that I've been involved in and First Amendment rights, is courtesy is not a compelling

state interest. So, next, with regard to the definition. It's overbroad. If the idea is to, to, to stop certain types of activity in front of abortion clinics, then why aren't these defined in the Act? Why is it a broad health facilities? As a friend of mine said, what this particular legislation would possibly preclude is you handing out Pizza Hut certificates to people entering Denver General Hospital. So, I think, in that instance it's overly broad. Then, with regard to education, counselling, etc., those terms which are justifications for approaching someone with their consent, I think reasonable men can differ. People with average intelligence that are not lawyers would have a hard time dealing with those terms which would allow them either to approach someone or not approach someone. Now, with regard to leafletting, the Supreme Court of the United States recently, within the last two weeks, upheld the right of groups to leaflet, to hand out leaflets and fliers on property that wasn't even unlimited traditional public forum, the forum that is used as part of or has been opened up for certain purposes. The Supreme Court, when it comes to forums that are traditionally public, has treated them as sacrosanct and will look very with a jaundiced eye at any type of prior restraint on these constitutional rights. The United States Supreme Court, not too many years ago, overturned a federal statute that precluded demonstrations or picketing in front of the United States Supreme Court. That's Grace v. United States. The same supreme Court, in 1988, in Boos v. Barry, overturned a district ordinance that had a limitation of 500 feet exclusion of any kind of signs or protests against embassies in Washington, D.C., and so there has never been a bubble zone, so to speak, that has been approved by the United States Supreme Court, and if any of their past dealings with these issues are of any indication of how they would rule in the future, I believe when

you come to any kind of restrictions with, like any kind of footage that's in this Bill, any kind of a courtesy-type of an expression for the intent and purposes of a statute, I think will be struck down any time anything that's overly broad like this will not stand constitutional muster.

CHAIR: Thank you.

WATWOOD: I'm open to entertain any questions that you have.

CHAIR: Senator Ruddick.

RUDDICK: Mr. Watwood, you've done a lot of work in this area. Can you tell me to your knowledge if 18-9-107 involving obstruction to sidewalks or streets has been established as unconstitutional in the State of Colorado. And I ask that (inaudible).

WATWOOD: I have never.

RUDDICK: (Inaudible)wide open (inaudible) (Inaudible) simply be rendering passage unreasonably inconvenient.

CHAIR: Mr. Watwood

RUDDICK: (Inaudible)than this bill.

CHAIR: Mr. Watwood

WATWOOD: Well, that is a sanction under the, under the criminal code, and if the police want to apply it, they can, and, just like the question you asked of Mrs. Hill, if police have reason to believe that one of the laws is being violated, they can arrest someone, but then the question is whether or not that's a lawful arrest, and they can be prosecuted for false arrest.

CHAIR: Senator Ruddick.

RUDDICK: But under this section, it has nothing to do with peace officers, just like this when a peace officer issues a ticket or cites you under 18-9-107(1a). This seems less, or more narrow in its approach than the law under this section.

WATWOOD: We're talking about First Amendment rights. You have to weigh that and a public sidewalk is a traditional public forum, and the First Amendment, which is, was, is the freedom of speech, is, is in the Bill of Rights as the First Amendment because that is the most precious right that the founding fathers thought should be protected, and so, when you have to weigh any kind of restriction on that First Amendment right against the compelling state interest. Now, if they can show there's a compelling state interest, and that that person, that they have reason to believe that there is a material and substantive disruption on the spot, I don't think they have to ticket anybody. They arrest them on the spot.

CHAIR: Blickensderfer.

BLICKENSDERFER: Thank you, Madam Chairman. Mr. Watwood, your contention that this is overly vague, and your use of the analogy of the Pizza Hut certificate in front of the hospital, as I read this, that would not be an issue, because this deals specifically with oral protest, education or counselling. I don't think your analogy fits.

WATWOOD: Well, how does someone determine that, Senator Blickensderfer? How do you know? My point is that there's no definition of the word counselling, education? How do we know that education is handing out coupons for Pizza Hut is not educating someone that they ought to go to Pizza Hut instead of Dominos?

CHAIR: Which is a good idea.

WATWOOD: I agree.

CHAIR: Mr., uh, Senator Blickensderfer.

BLICKENSDERFER: I don't need to answer it.

CHAIR: All right. Thank you very much.

LOTS OF NOISE, SHUFFLING, ETC.

CHAIR: Identify yourself for the tape, please.

HANKS: Yes, my name is Leslie Hanks, and I'm the Executive Director of Citizens for Responsible Government. Good afternoon, Chair, Madam Chairman and Committee, and thank you for allowing me the opportunity to speak this afternoon. While Citizens for Responsible Government does not endorse or participate in protest activities related to the abortion industry, we are sympathetic to those who do. Our organization is the political arm of the pro-life movement in Colorado, and, as such, we work to support and encourage those seeking elective office who believe in the sanctity of life. We believe in the Declaration of Independence which states that all men are created equal and are endowed by their creator with certain inalienable rights, among them, life, liberty and the pursuit of happiness. We support the Fifth and Fourteenth Amendments and the U.S. Constitution which notes that the State shall not deprive any of life, liberty or property without due process of law. We believe in the First Amendment and the Bill of Rights which upholds the free speech rights of citizens without prior restraint and believe that content-based restrictions are clearly unconstitutional. We oppose targeting one group of people who protest while not restricting the protest activities of any others. We applaud the founders of the Republican Party who formed its first platform on the principal that no human should be considered the property of another. This is clearly the premise under which women believe they have the right to terminate the life of their unborn child. We firmly agree with Representative Charles Duke, who noted in the House floor debate that the Colorado legislature is restricted by the Colorado Constitution in Article V, Section 25 from voting a special privilege or benefit to any individual organization or association. We feel that it is most unfortunate that although there are pro-life legislators in this legislature, it

may very well be that none sit on either committee hearing this measure. We fear that this may not be a coincidence. Furthermore, we wonder if it may be a conflict of interest that of 21 legislators sitting on the 2 committees hearing this Bill, 10 have their names on the current National Abortion Rights Action League PAC Fundraising Invitation. NARAL would clearly benefit from this legislation. Also, of 18 of the Bill's sponsors, 16 have their names on this same invitation. Finally, I would like to point out that although our members are not wearing tags opposing the unconstitutionality of this legislation, you may notice, if you look closely, a pin which is a replica of the fully-formed feet of a 10-week unborn baby that pro-lifers wear. I brought one for each of you. Our organization opposes House Bill 1209. We support the free speech rights of pro-lifers who know that an unborn baby's heart beats at 18 days after conception. That's why we say abortion stops a beating heart. Please don't prevent them from sharing the truth with women who may otherwise carry a deep pain within their hearts forever after learning their baby is far more than the blob of tissue Planned Parenthood tells them they are removing. I would like to ask you to vote no on House Bill 1209.

CHAIR: Thank you. Are there questions? Senator Lacy.

LACY: Thank your Madam Chairman. In the discussion before, and I've heard it in other situations having to do with the clinics, the percentage of the people who are going there for other than abortions, it was indicated that there was 7% at Planned Parenthood that attend for abortion, which leaves 93% of those people going there for other reasons. What's your thoughts on those numbers, number one, and what's your thoughts about some of the encounters that that they have when, in fact, they have nothing to do with an abortion.

CHAIR: Ms. Hanks.

HANKS: Thank you. As a matter of fact, I do believe we have some people that have been involved in picketing that would address that issue. I'm not sure whether they'll have the opportunity to speak today. I have no way of knowing whether only 7% of the people going into Planned Parenthood are indeed seeking abortion. It raises a question in my mind, but I'm really not certain. However, I, I know of one gal who's with us today who would be speaking to you about her activities at Humana Hospital where abortion is something that's performed there, and I believe that is in your district, Senator, and when she passes out literature to people that are going into the hospital, she has no way of knowing whether or not they actually would be there to receive an abortion, but she has, I think, on some occasions, felt like the people receive the information gratefully so because they would not necessarily want to go to a hospital that was procuring abortion for women and, and they might choose to go elsewhere for their medical services. So, that doesn't exactly answer your question about Planned Parenthood. Frankly, I guess, I don't feel like if somebody was handed a leaflet and they were going in for a pap smear, and so they hand it back to the woman or they save it for a friend. I mean, that could possibly happen.

CHAIR: Thank you very much.

HANKS: And I do have a written statement for you that I'd (inaudible).

LOTS OF PAPER SHUFFLING.

CHAIR: Marjorie Hopfenbeck. Identify yourself please.

LADY: My name is Marjorie Hopfenbeck, and I thank you for allowing me to share a little bit of my story. I am on the other side of the fence at 20th and Vine. I see a different picture than what has been alluded to today in other testimony. As

picketers, we endure a lot of verbal abuse. We have a lot of vile language directed at us. The middle digit of a finger is often directed at us. I have never seen a protestor or picketer, rather or a pro-life picketer using vile language. I have never seen one using obscene gestures. I sincerely believe that the motives of prolife picketers are to save babies' lives, to save emotional as well as sometimes physical harm to the mothers. I believe their motives are pure. They are there voluntarily. They are there with motives, and I don't believe that I have ever seen them accost anyone in a menacing manner. I don't believe that I have. I don't. I know I have never seen them call out to a patient and call her murderer. I believe there have been times where maybe some of the Planned Parenthood people have been the object of that, but not any prospective patients. The protestors that are pro-life are there to be supportive to the mothers that are going in for an abortion. They want them to have information. We have information to give them about crisis pregnancy centers. We have information to give them about alternatives to abortion. The crisis pregnancy centers that they are told about offer them services that often times are free. They do not have to pay for them. They are offered counselling. I would question some of Planned Parenthood's knowing really how that counselling goes. I have not protected a lot, but I have been at Planned Parenthood a number of times, and I don't believe that I have ever seen a Planned Parenthood person out there listening to how a prospective patient was being counselled, so I don' t know how they can say that it wasn't very good counselling. I would welcome any questions as to motives and as to desires on the part of pro-life protestors. Thank you, Ma'am.

CHAIR: Any questions? Thank you very much. We have 11 people still signed up to testify. I would like to get the

Committee out of here by 6:00 o'clock, and we will vote on the Bill before we adjourn. So, I would ask now. We've heard from five persons on each side without restricting the time. I would like to hear, have people come and do not repeat anything we 've heard, and, also, limit, limit your comments to 2 minutes, and I'm just gonna call you. I'm gonna go back and forth as fast as is possible between pros and cons. Marilyn Shuey.

SHUEY: Chairwoman Wham and members of the Committee. My name is Marilyn Shuey, and I'm representing the League of Women Voters of Colorado. The League of Women Voters of Colorado support House Bill 1209 for the following reasons. A woman's constitutional right to seek medical care and counselling for an abortion should not be denied by threatening and harassing behavior at the clinic door. Women have been physically accosted and emotionally vilified, particularly by Operation Rescue members, whether they entered a clinic for an abortion or other reproductive medical care. At last count, there were some 55 anti-choice organizations active in Colorado. Most would outlaw abortion even when the health of women is threatened or in cases of rape or incest regardless of the victim's age. The League's position on reproductive freedom is grounded on the constitutional right of privacy of the individual to make reproductive choices. This can happen only if a woman can go to a clinic with the assurance of being able to enter in a calm and safe manner, the same as going to any other facility providing health services to the public. We urge your support for passage of this Bill. Thank you.

CHAIR: Thank you. Are there questions? Thank you very much. Lora Lee Gorton.

GORTON: Chair, I'll make mine really brief because of the time. I am a picketer and have been for years, and the reason that I'm doing it is so that the girls and the husbands and the boyfriends and the grandparents can all become informed about what they're really going in there for and what the alternatives are. I would not be a part of a group that would be violent or protesting in any way that would be not within, would be within our constitutional rights. I would withdraw from any organization. I have picketed in Boulder and in Denver and in Aurora at Humana and in all cases I've never seen anything violent or offensive by any of the members, and there's several different groups, it's not just Operation Rescue, Right to Life, it's all different groups, and we're just all, we want to prevent the violence that you see on the pictures there, so we wouldn't be violent to stop violence. That would destroy our whole purpose in what we're doing. The only time that I've seen anything where there was pushing and shoving was when the escorts, and I've stood right by them seeing them doing it to others who were picketing, pushing and shoving them, and I've not heard anything about this, but I saw it. That's the only thing I've ever seen that was, that I objected to. Okay? Thank you very much.

CHAIR: Would you wait for a question, please? Senator Lacy.

LACY: I guess your picture here I do find offensive. I happen to know what an aborted fetus looks like. I happen to have my own ideas about that, and it's because of situations like this, to where you feel like we have to be told, we have to be shown on a regular basis. You say you have not heard of anybody (inaudible) pushing, shoving or hateful in their comments.

GORTON: I said I never saw any violence.

LACY: Well, that's (inaudible) violence. Well, I consider violence by some of the comments having to do with when you discuss about an aborted fetus. I happen to be a pro-choice individual, and I do that because I was able to make a decision having to do with my own child, and I had her, and she's a beautiful child, and I'm very glad that I did that. But what I did not appreciate is the phone calls that I received because you nor anyone else knows unless I've told you where I stand on abortion. But you choose to constantly put this type of thing in front of my face, which I do not appreciate, and I, I apologize, Madam Chairman, because I came in here not knowing where I was going to be on this particular position, but unless we deal with the extremes on both sides of this issue, I happen to think that our society is going to be in great danger, and aborted fetuses or not.

CHAIR: Thank you.

GORTON: Thank you. I didn't (inaudible) offensive because I passed them upside down so that anyone that wanted to look could have that choice.

CHAIR: Thank you. Lois Mayerson.

MAYERSON: Good afternoon. I'm here today representing Colorado Citizens for Choice. We are a nonpartisan organization, we do not advocate abortion nor do we advocate women having babies. However, we are dedicated to the protection of the constitutional right of privacy of the individual to make fully informed reproductive decisions for themselves and to maintain a safe and legal environment in which they may carry out their own decisions free from harassment and intimidation. Protestors at health clinics have targeted only those clinics which perform abortions. They ignore the fact that many women who use those clinics are not there for abortions. Their behavior is aggressively obscene, verbally abusive, and

calculated to intimidate. They have chosen their targets with the belief that because the women using those clinics are disadvantaged, either because of money or where they live, that they are vulnerable and totally unprotected, that no one cares about them. They are mistaken. This State will not allow fundamental rights of individuals to be diminished or rendered useless because of how much money they have or where they live. This State protects the rights of all individuals, the rich and the poor, the rural resident as well as the urban. This Bill is a good Bill. It respects the rights of those who wish to protest and allows a measure of protection for law abiding citizens who are following their own decisions about what is right for them. While it does not eliminate the nastiness, the zealous obscene verbal abuse, the blocking of passages by cars, etc., it is certainly a welcome direction for this State to follow. For so many, many years, women have been regarded as second-class citizens. This is a step toward acknowledgement that women are capable of judging for themselves what is best for themselves and for their lives. Thank you.

CHAIR: Are there questions? Thank you.

MAYERSON: I have some handouts.

CHAIR: Phil Harrison?

HARRISON: I am Phil Harrison, from Colorado Springs, and I have come here to oppose House Bill 1209. House Bill 1209 as approved by the Colorado House of Representatives is totally unconstitutional, not in accordance with the Constitution of the United States as well as the Constitution of the State of Colorado. Amendment One of the Constitution of the United States tells us "Congress shall make no law abridging the freedom of speech or the right of people to peaceably assemble." The Constitution of the State of Colorado reads, "No law shall be passed impairing the freedom of speech.

Every person shall be free to speak whatever he will on any subject being responsible for all abuse of liberty." The picketers of Operation Rescue have in all instances participated in peaceable assembly, even to the point of instructing participants that they would be asked to leave the area if they do not comply. Operation Rescue leaders will go to the extent of requesting the authorities to remove any individual not complying with peaceful assembly. The right to free speech has been upheld by the United States Supreme Court in a number of cases. I believe my predecessor, the attorney that preceded, went into the many cases that state about free speech, so I will not go into those. The bubble zone provision of House Bill 1209 directly burdens these traditional free speech activities. Under this provision, a person can simply hand out leaflets in silence to passersby. Instead, the person must ask and receive and express oral consent in advance in order to approach close enough to hand out a flier. A counsellor who wants to offer information on alternatives to abortion must likewise stand back, call out for and receive, in advance, express oral consent to approach to a point where semi-private conversation may be held. In effect, the bubble zone converts virtually every form of public communication into a verbal solicitation. Although the content of this proposed Bill hides under the color of healthcare facilities, it is obvious that this Bill is only applicable to the persons of the prolife persuasion and is, therefore, also unconstitutional as targeting a singular group, namely pro-lifers of this state. It should be obvious that House Bill 1209 is unconstitutional and will only lead to extensive litigation and expense if passed by this legislative body. I therefore request that this committee defeat its passage for unconstitutionality and the targeting of a singular group rather

than for the health and welfare of the State in general. Thank you.

CHAIR: Thank you. Senator Feeley.

FEELEY: Yes. Thank you, Madam Chairman. I just want to clarify one thing. It was a blatant misstatement made by the witness here. There is absolutely nothing in this Bill that requires oral consent. It was specifically omitted. I would be surprised if the witness, if he can point to in the Bill, I'd be very surprised, but the Bill was very carefully drafted not to impose such a requirement of oral consent.

CHAIR: Thank you.

HARRISON: It is very evident that it does require oral consent, maybe not in a specific word that is in that legislation, but the intent of the legislation is there.

CHAIR: Thank you. Marie Perkins. And I will, again, ask you to confine your remarks to a couple of minutes.

PERKINS: I'm sorry. This is a pamphlet. First of all, I am Marie Perkins. I am from the City of Boulder. I am glad to be here today to testify before you. I'm sorry I didn't make the cut of the first five people that were allowed to testify for the pro-life side, but I am here, and I have some significant things to say, and I would like to say first of all that I have a pamphlet that I do offer women on the public sidewalk in front of abortion clinics, and I would like to hand this out today.

CHAIR: Just leave them there, and we will hand them out later.

PERKINS: Oh. All right. And I'm not even eight feet. I mean, I must be more than 8 feet, Madam Chairman.

CHAIR: That's right.

PERKINS: All right.

CHAIR: You are.

PERKINS: And you're refusing to take this leaflet and other things?

CHAIR: That's right. I just said leave them, and we will pass them out later.

PERKINS: First of all, I would like you to know that I will give you some background here on the Boulder buffer zone. I have lived in Boulder for 20 years. There was considerable testimony given at the City Council about whether or not people approved or disapproved of the buffer zone. And input was asked from various individuals in the community. The Police Chief at that time, Chief Jay Probst, came down to the City Council and testified that there was no need for the Bill or for the ordinance. And he recommended that they not pass the Boulder buffer zone ordinance, and he suggested several practical things that abortion clinics could do if they really felt that there was a harassment problem on the sidewalk, and these were all discounted by people who were running the clinics, and at that time, the Mayor said, "Thank you, Police Chief Probst. How many feet shall we make this?" which, when you have someone of the caliber of a police chief come down and testify, I think that that needs to be taken into consideration, and I would ask you where are your pages and pages of harassment violations that you surely must have if you are going to present this kind of a bill to the legislature of Colorado? Now, I would like to just quickly read you general offenses that are in the laws in Boulder. I just picked this up from the Boulder Clerk. These are physical harrassments, either offenses against the person. These are use of fighting words, these are also obstructing public streets, places or buildings, and the part that's, uh, Senator Ruddick quoted for the purpose of this section, "public place means in any public highway, street, alley, walk, parking lot, building, etc., any of

those portions of either private or public property in which there would be a problem." These are offenses against persons, should you do any of these things. Now, I would ask you whether approaching someone within eight feet with the intent of giving a pamphlet on community and state services that would help a pregnant woman, in other words, an alternative information pamphlet, whether this is an offense against the person. Because, clearly, in here, it says, Section 3, "No person shall approach another person within eight feet of such person unless such other person consents." Now, coming over here, today, on the little free trolley, a woman walked up and said, "Could I give you this, please?" and I reached and took it. It didn't bother me. She said, "You'll get a free tooth brush." Well, of course, I have to go up and make an appointment with the dentist to get it, but I can reject it. I can tear it up. I'm not threatened by the fact that she handed me something. And I would challenge anyone to say, including the Chairman, that this pamphlet of various agencies and services that help women in the state and the community, pregnant women, women in crisis, who will not get that information on the public sidewalk. I challenge you to say that I am threatening any person on that sidewalk with that information, particularly when I may not know who it is that I would like to give that information to. If I would like to just protest abortion alone, I should be able to walk up to anyone within eight feet and say, "Could I give you some literature today?" I have never had a complaint issued against me in the City of Boulder, there has been no arrest for harassment in the City of Boulder before or after the buffer zone. And so I want to say finally, to you, my free speech rights, love it or hate it, but leave it alone unless I actually commit a crime against a person which are clearly stated in any harassment laws in any city or town in this state. Thank you.

CHAIR: Thank you. Senator Blickensderfer.
BLICKENSDERFER: Thank you, Madam Chairman. Can you tell us how your practice has changed between before the time the buffer zone was in effect and now? Do you, you say there have been no harassment charges or anything brought by the city against you or anybody else.
PERKINS: Right.
BLICKENSDERFER: But how have you changed your practice to conform to the buffer zone while still accomplishing what you set out to do?
CHAIR: Ms. Perkins.
PERKINS: Well, actually, Madam Chairman, thank you. What actually happens is that the woman is intimidated. This serves to intimidate the public from taking the literature, because I stop eight feet from her, and she thinks, "What's happening?" They have no idea that there's a law that you must stop eight feet before you offer literature. So she's less likely to take it. I just demonstrated that with the piece of paper that I was offered today. When you can step up to someone and say, "Could I give you some literature today?" Normally, they take it. If they don't like it, they tear it up. They don't have to look at it. No one's forcing anyone to look at this literature. So, in fact, it intimidates the person on the public street who might ordinarily take it, for whatever reason he wants to look at it, and I think he or she has the right to get it.
CHAIR: Senator Blickensderfer.
BLICKENSDERFER: Madam Chairman, I'm not quite sure you got to where I'm leading. Is that what you do now? You stop at eight feet and
PERKINS: Yes, I do.
BLICKENSDERFER: Do you talk to the person?

PERKINS: If there, there are many times when I might turn around and someone's already facing me.
BLICKENSDERFER: Um hum.
PERKINS: In which case, according to the law, I cannot say anything, because she's within my eight feet. You know, at some point, we will. The city attorney is very concerned that someone's gonna challenge this. At some point, I will say to the woman, as I turn around, at two feet, "Could I give you some literature today?" Particularly, a woman who's crying. I have had people come out to get what I had because I said to them, "If you go in there and you need some alternatives, you need some help, I have a pamphlet I can give you. Please come out." I don't think that I'm offending the person, that this is an offense against the person, which is what this law is gonna do. It's gonna make it an offense for me to walk.up within eight feet of someone 100 feet around an abortion clinic and give out some literature. If I have offended someone, charge me with the laws that are on the books, don't make up a law that prohibits me from getting my free speech right on a public sidewalk.
CHAIR: Senator Blickensderfer.
BLICKENSDERFER: I have some follow-up questions, Madam Chairman. How long has the Boulder ordinance been in effect?
PERKINS: I think it's been about 7 or 8 years.
BLICKENSDERFER: And you haven't had any complaints been registered against you?
PERKINS: We have never had a
BLICKENSDERFER: Since the ordinance went into effect.
PERKINS: Absolutely not. Or before. There were no charges of harassment.
CHAIR: Thank you. Senator Feeley.

FEELEY: Very quickly. I just want to clear up one point the witness made, and that is the attorney's concern challenge to this Ordinance. That, in fact, has been done, and Judge weinshienk, in 1987, determined that the Ordinance met constitutional scrutiny.
PERKINS: Well, it won't hold up in a higher court, and
CHAIR: (Inaudible).
PERKINS: I'd like to answer. We've spent $50,000 taking that to a federal court.
CHAIR: That was a federal court, Miss Perkins.
PERKINS: Yes.
CHAIR: It was a federal court.
PERKINS: Yes, it was.
CHAIR: Thank you.
CHAIR: Ann Sullivan.
SULLIVAN: My name is Ann Sullivan. I am from Colorado Springs. I've spent a great deal of time on sidewalks outside of medical facilities and other buildings, both public and private, in three states, for the past several years. I carried signs and handed out literature to people entering and leaving these buildings, whether they wanted it or not. I have even walked along with them explaining to them my point of view. My signs were large enough to be seen at least 20 feet away, and my voice reached far beyond that. I didn't even know why these people were going in and out. I just knew that those who sent me said to talk to everybody. On nice days in the summer, I even brought my children with me. Who can resist taking a pamphlet from a smiling little child? On occasion, I have walked up to the doors of private homes trying to persuade them to do things my way. The polite ones merely said, "No, Thank you," and closed the door firmly. Some threatened to call the police if I didn't get off their property. Others were very

interested in learning the truth of which I spoke and thanked me for bringing it to them. Under cover of darkness, I have trespassed onto private property while large, important meetings were going on inside and place my pamphlets on the windshields of cars. Fortunately, I was never caught. Do I sound like a dedicated pro-life sidewalk counsellor? Worse than that. I'm a dedicated Republican campaign worker. And that's not easy when you live in a southern state. All of these activities were approved in practice by political parties. Campaign workers and sidewalk counsellors have a lot in common, including stretching the law. If you put a muzzle on one, you'll be muzzling yourselves. There are other important questions you should ask yourself when considering this legislation. Number one, you've already answered. Number two, who will benefit from this Bill? Look to see how many medical facilities are represented here. Is there more than one? In Colorado Springs, there are at least six places that do abortions. Only one considers sidewalk counsellors a threat. Do you want to pass laws that benefit special interest groups? Number three, are actions described in all of this testimony already covered by existing laws, such as nuisance, trespassing, littering, harassment, noise abatement? Do we need a law to control every conceivable human activity? Number four, how many people approaching a medical facility on foot would benefit? If you look at these buildings, you will see that almost 100% of them have a private parking lot attached to the entrance. Women coming for an abortion would surely not arrive or leave alone and on foot after having such a serious procedure.
CHAIR: Would you finish quickly, please?
SULLIVAN: Just exactly where does this bubble begin and end? Both the person approaching and the counsellor are

moving. If the person hesitates and the counsellor moves closer than eight feet, does the bubble disappear because they appear to be listening? If the person walks faster than the counsellor and includes the counsellor in the bubble, can the counsellor charge that person with entrapment? If there are two persons approaching at the same time and the driveway entrance is less than 16-feet wide, which bubble is the counsellor obliged to observe? If the bubbles overlap and the counsellor ends up in both bubbles, is he or she in double jeopardy? You may think I'm joking, but I've heard stupider arguments over lesser matters in court, and I' m sure you have, too. Will any of this hold up in court, or will it get dismissed for silliness? Will this have an educational or deterrent effect on those arrested? Probably not. Sidewalk counsellors are not paid for their work, and they are accustomed to disappointment. They will just find another way to do it. Will it stop others from becoming sidewalk counsellors? We'll never know because you cannot measure something that didn't happen in the first place. When counsellors are arrested, who will pay the bill? One guess. You're right. The taxpayers, of course. In El Paso County, the judges are notoriously unsympathetic to pro-lifers. Unlike legislators, they don't seem to worry about returning to office. If 1209 becomes law, you will be handing them another tool with which to gouge the taxpayer. They can't wait to get their hands on this one. They customarily give maximum.sentences and fines for trespassing on clinic property, which is a misdemeanor. Rightly so. After all, didn' t they break the law? Of course, the guilty one will not or cannot pay the fine, so they go to jail at a cost of $65 per day to the taxpayer. The City brings charges, so taxpayers pay the court costs. All this comes at a time when we are looking at more jail space to hold more prisoners. In the recent past, 9

people were charged for trespassing at a local clinic in a four-day trial. The clinic would accept no plea bargaining. All were found guilty and went to jail. The prosecutor wasn't too happy about this because at the time there were 15 murderers, including the killers of Diane Hood and Lane Schmidke, awaiting trial. He wasn't overjoyed that his assistants that were investigating trespassing cases. Finally, I ask that you set aside your personal views on abortion, be they pro or con, and consider H.B. 1209 as objectively as possible. I have not given you a lot of case citations because we are concerned what happens now and in the future in Colorado, not what has happened in other states. We as voters expect you to pass strong legislation that would have at least a 90% chance of standing up in court for both convictions and constitutionality. Although this Bill is listed as having no financial impact, we know that court costs, jail sentences and additional jail cells have a very definite, though indirect cost to the taxpayers. Remember, that in the past election, the poor state of the economy and government fiscal reform were and still are the primary issues. Abortion is way down the line. Are you willing to give us responsible cost-free legislation? Thank you.

CHAIR: Thank you. Cleta Jasper. I really must ask you to be within the two minutes, please.

JASPER: I have truncated my remarks for you.

CHAIR: Good.

JASPER: I am Cleta Jasper from Colorado Springs, and I appreciate the opportunity to speak in opposition to the Bill. It appears that you desire to protect abortion seekers, and for that desire, I commend you. However, the reality of the Bill is protection of abortionists and their lucrative industry. Women, again, are the victims. Abortionists fear women's ability to cope their problem pregnancy. They have been known to

exploit her fears to keep her on their abortion tables. They lose money if she changes her mind and goes home. I'd add that not only are pro-lifers the people helping women with material and emotional assistance during her pregnancy, but they also pick up the pieces after her abortion and strive to bring the abortion-damaged woman back to wholeness without condemnation. Post-abortion syndrome is a very real pain felt by multitudes of women for years after an abortion. I would urge you to kill this Bill and allow the sidewalk counsellors to do their work.

CHAIR: Thank you. Barbara Jacobson.

JACOBSON: Thank you. Just about every argument that can possibly be made has been made, so I only have a few comments. I am a person who will not hesitate to picket at a hospital or an abortuary, which is what I call it, because I feel it is, it is wrong, the killing of children. And that's why I'm out there. I don't make a dime. I spend my time. I have my husband's approval and my children's approval. I have handed out very little literature when I have been outside the hospital in Aurora, which is the Humana Hospital. There are a few doctors there that will perform abortions. Excuse me. I don't want to call them doctors. There are people there that will perform abortion. In the past, I've always considered a doctor someone who has healed, someone who has saved life. I don't see that happening now with those people that perform abortions. I understand that the people that, the abortionists, do not have to take the hippocratic oath. That was what I understood a long time ago. When you went to a doctor, you went for healing. You have described in your Bill these facilities as health facilities. I ah, I have a hard time finding a health facility any place where a human life is taken, and so I would ask you to change your terminology there, and I would ask you to,... my husband is a police officer. We are in a city

that is understaffed for police officers. They don't have time to go on calls like this, and this is a costly procedure to the city. It's a costly procedure to the state for you to enact this legislation. I ask you, please say no to 1209.

CHAIR: Thank you.

CHAIR: Senator Lacy.

LACY: I worry about the other people that are going there, not for an abortion.

JACOBSON: There are a lot of people who will not go back to Humana Hospital because they know there are supposed doctors there that are performing abortions, and I say I am proud of that. I am proud of turning people away from that hospital, and I will not say no to standing up and speaking out against an atrocity in this country.

CHAIR: Senator Hopper.

HOPPER: I'd just like to follow up on that. You're talking about the hospital, but what about Planned Parenthood? There are a lot of young women, women, young and old, who can, can only get their gynecological care at places like Planned Parenthood because they can't really afford, if they don't have insurance or for another reason. And so, if they're going in for a pap smear, should they, should they be subject to this sort of, sort of. you know, what you call counselling?

JACOBSON: I understand that Planned Parenthood makes a lot of money off of abortions. I see that as a money-making proposition for them. I think there's plenty of places where people can go if they want to find out information, gynecological information, where they will receive low cost care, and I'm not so sure that there are steps that prove that Planned Parenthood is the only place you can go to get information, to get condoms. They distribute condoms guite boldly to teenagers. And, incidentally, I've stood up in proceedings

where they wanted to institute that procedure in the Aurora Public Schools, passing out condoms to teenagers.
HOPPER: That's not what I asked.
JACOBSON: What I'm saying is you can go elsewhere to get condoms and information and low cost care.
HOPPER: Thank you. Would you get a list of those to me? Just, say, in the Denver area? That would be helpful.
JACOBSON: I'd be happy to.
CHAIR: Thank you. June Harrison.
HARRISON: My name is June Harrison. I'm from Colorado Springs. I think just about everything has been said, but I think I can add a little bit something. I thank you for this opportunity to be here this afternoon. I have been involved in pro-life activities for approximately the past 10 years, I have written letters to our congressmen, both at the state and federal levels, letters to the editor, participated in local and state marches for life. This past January 22, I participated in the March for Life in Washington, D.C. Also, during this time, I have been exercising my constitutional First Amendment rights of free speech and peaceable assembly. I've been called every name under the sun. Gotten, somebody mentioned this earlier, gotten the finger hundreds of times, and, yes, I've even had a death threat. We were at Planned Parenthood one time, and when we got home, there was a call on our answering machine that said - this was in Colorado Springs - that the next time this person saw me at Planned Parenthood, he was going to shoot me and my husband, and we did turn that tape in to the Sheriff's Department in El Paso County. I've, and you've heard all the things on the 8-foot bubble zone, and on the 100-foot situation, but, and I would, too, like to say that this proposed legislation is definitely discriminatory in its proposed limitation of free speech and assembly. Its limitation targets a small group of

people whose actions another small group of people disagree with, certainly not worthy of becoming state law, and all out, all the testimony that I have heard today is mainly that is with Planned Parenthood at 20th and Vine, and there are other. We have a Planned Parenthood in Colorado Springs. There's a, an abortuary in Grand Junction, and abortuaries up in Vail, and all over the State of Colorado, and, yet, you're targeting this Bill that is coming before the legislature just for one particular area and that is, is, was mentioned by Mr. Watwood that this is certainly not in the interests of the State. Also, I would like to say that this past January on our way to Washington, we were out here at Stapleton Airport, and I heard a public announcement over the loud speaker saying that there could be people distributing literature in the area, that these people were exercising their First Amendment rights and people could either accept or refuse the offered literature. There was no 8-foot bubble zone around me to protect me from their unwanted approach. Should there be? Or will there be? Is there going to be a new law written every time someone doesn't like the activity of someone else? You people would be very, very busy people. Peaceful demonstrations, pickets and protests are activities generally protected under the First Amendment to the United States Constitution. No matter how offensive the language may appear to be, there can be no absolute ban on the right to free speech or the right to peaceably assemble. Because of the unconstitutionality of H.B. 1209, I urge you to reject this proposed legislation. I also have a list of case law that, a whole list, if you're interested, of cases that have been ruled on, and I also sent this same list to the Honorable Jean Atkins who is State Chairman of the House Judiciary Committee. If any of you are interested in this, it's a whole list that I would be willing to leave.

CHAIR: Thank you.

CHAIR: Thank you very much. Philip Faustin. Keep it short, please, Mr. Faustin.

FAUSTIN: I've got a couple things that I feel haven't been covered so far. I will be very brief.

CHAIR: Thank you.

FAUSTIN: One is the image that has been given in a lot of the testimony, much of which really hasn't had to do with this Bill. People are talking about shouting and all these different goings on which I don't like, either. But this Bill wouldn't stop that. If someone is prone to that type of thing where they like to yell at people and if they want to harass someone or do something like that, this Bill won't stop that. You can't prohibit that. As much as we might dislike things that people say on any issue, we can't absolutely stop that. So what we're dealing with specifically on this Bill is the 8 feet within 100 feet of the door which, in most cases, is out on the public sidewalk, and as you think about this, you might think well this, as Senator Feeley said, it's a courtesy bill, a common courtesy sort of thing, trying to civilize the sidewalks. But have any of you ever been approached by a Kirby Vacuum salesman? Okay. Did you enjoy that experience? Probably not, but how does the Kirby Vacuum salesman work? Does he stick a flier on your door or have someone call you and say - I hope no one here sells Kirby Vacuums - "I sell Kirby Vacuums. If you would like to buy one, give me a call." It doesn't work that way. Usually, they figure out a way to get into your home, and they've got their sales pitch which I remember as a young child from the man being at our home coming at 8:00 o'clock and leaving at midnight, four hours worth of every kind of conceivable demonstration you can imaging from shampooing a little spot of the carpet to waxing a little spot of the floor to even

vacuuming the mattress on the bed to show how you could bring little things out of that, and his whole goal over that period of time, after my father said over and over, "I'm not interested. We'll take the steak knives, but you can go home," he kept going on and on. He was a professional salesman. That's his job. He knows that you're not gonna just sell it by putting a flier on the door or your first time the person says no to you, so, as we're looking at this, if you view everything that a pro-lifer does towards a woman seeking abortion or someone going into one of these places as harassment or designed to just intimidate them or something like that, well, then, you would accept this Bill as a logical thing. But what about the women, like Michelle, who testified earlier, that have changed their mind? Why did they change their mind? Because she was given some information. And that's what we're there for - to give that information. Now, this Bill, in the introduction to it, talks about medical counselling and the importance of that, but true medical counselling is not given in these facilities. We have challenged Planned Parenthood at the Vine Street Clinic to let us co-counsel these people, let us have our literature, let us have a little desk up front there and talk, and we'll quit picketing you. Did they say, "Fine. You know, we'll do this in a nice civil way. You sit at your desk and if they come in and want to talk to you, that's fine." No. They declined that. Why? Because they'd lose business. That's the issue, here. It's the abortionist protection bill. So, that's what we're there for - giving proper, true medical information, not biased pro-life information, scientific, maybe an actual photograph of a baby at that stage of development, which is a very beautiful picture of an 8 or 12-week-old child. Maybe it's just a list of, "Here's what's happening to a fetus child at this stage of development. Here's the scientific things going on inside of that." That infor-

mation is not being given inside. I think women have a right to that information. Now, people talk about being pro-choice, but what is this Bill? Is this pro-choice? Is this saying, "Get all the information and then make up your mind?" No, it's saying, "You can't have the information," and I think it's close to what we see on this table right here. Now, a little bit of information from our side was passed out to people, and, of course, there was one piece that people found objectionable, but here's other things - none of these have pictures. They're just information. But they have been denied to the people on this Committee. Now, maybe they'll be passed out before the vote. I hope so. But will there be as much time for people to read through it and digest it and think about it, or will it be at the last minute? Anyway, my point is

CHAIR: And then will you finish?

FAUSTIN: Yeh. Sure. We're not there to harass. Maybe some people are, but this Bill will not stop them. We're giving true medical information, and this is affected by this Bill. Now, to close up with, to finish up with my Kirby Vacuum salesman, there's times talking to a woman that you might walk up to her and say, "Can I give you some literature?" "I'm not interested." Okay? So there's no consent. According to this, that's the end of the conversation or you risk six months in jail. Next question, "Well, do you know there's alternatives?" "I'm not interested." "If you need financial help, there's help available." "I'm not interested." Next question: "Well, what do you mean." "You mean you can help me in this way." And then, a conversation begins. But it didn't happen on the first time. Is that harassment? Is that something that should be stopped by law? To have a meaningful conversation that might take a couple questions? Might take a few steps down the sidewalk to get to that point where the woman realizes you have

something that she wants? She's not going to get it inside. The only way she's going to get it is if she's given it on the way in. Thank you.

CHAIR: Mr. Faustin, you indicate that you are a member of Operation Rescue.

FAUSTIN: Well, I'm a spokesman for Operation Rescue, Colorado.

CHAIR: And do you participate in their activities?

FAUSTIN: I have, yes.

CHAIR: It's been indicated here today by the persons opposing this Bill that all of the, the approaches, the words, everything are very calm and courteous and they're stopped immediately if people don't want them. Do you feel that's the way Operation Rescue works?

FAUSTIN: Well, there's a couple facets to Operation Rescue. One if we're talking about the typical rescue situation, that's one thing - where people are sitting, blockading the door. People have opinions about that. Another is picketing, sidewalk counselling.

CHAIR: And that's only in a very courteous, restrained manner?

FAUSTIN: By Operation Rescue, yes. And I might add that Operation Rescue has not been involved in what goes on at 20th and Vine. We haven't done anything there for over two years.

CHAIR: Where do the things that I see on TV? Those don't look very calm and non-violent to me. How, how, are those staged, or are they not real? Are there not that kind of activity, is there not that kind of activity going on?

FAUSTIN: Well, I'm not sure exactly, specifically what you're talking about.

CHAIR: Well, how 'bout Topeka the last couple years ago or last summer, the pictures we saw? Was it Wichita? wherever it was, those pictures were very violent.
FAUSTIN: I'm not sure what you're talking about. I don't know any. I was in Wichita. I know of no violence. I
CHAIR: Oh.
FAUSTIN: Was there anyone charged with assault?
CHAIR: I don't know. I just saw some things on TV that did not quite go along with what I'm hearing today, and I thought they were Operation Rescue. And was that all within 100 feet of the door and within 8 feet of the person?
CHAIR: It appeared to be very close.
FAUSTIN: Well, anyway, I don't know what you're specifically talking about, but as I said, and I say to the Committee, think of the impact of this on meaningful conversation.
CHAIR: I think we're having meaningful conversation. We're at about 8 feet apart.
GROFF: Madam Chairman.
CHAIR: Senator Groff.
GROFF: If someone says to you they don't want to discuss their decision, how can you characterize that as a meaningful conversation if you're talking and they don't want to talk? It's only meaningful to you, perhaps, but not meaningful conversation if one person says, "I'd rather not discuss this." How can you characterize that as a meaningful characterization?
CHAIR: Mr. Faustin.
FAUSTIN: Well, I guess I'd go back to my analogy of a salesman. I mean, have any salesmen been charged with harassment because they're persistent?
GROFF: Well, they might if (inaudible). Your father allowed the Kirby. By the way, I sold Kirbys in college.

LAUGHTER
GROFF: I sold two.
LOTS OF LAUGHTER
That's why I became a teacher, not a salesman. But, you know, your folks allowed the salesman in, and the salesman would have been in serious trouble if your father had asked him to leave and he had chosen not to leave and your father had called the police. Right? Because he then would be, he would be, be all the different charges that, that I'm sure that, many, that he would have been violating if he had stayed after you asked him to leave. (Inaudible) invited him in, and when someone says to you when they go into a clinic, "I don't want to talk to you," isn't that, isn't that enough? and don't you become an harasser after you, after they say, "I don't want to talk to you?"
CHAIR: Mr. Faustin.
FAUSTIN: I don't think so. And the reason is because, I mean, as I said, in that analogy, I mean, you're, you might be persistent, because you're trying to find out, you know, even the abortion industry talks about abortion being such a difficult decision, and I think it was Kate Michaelman who said, "No woman wants an abortion, but she gets an abortion like an animal with its leg in a trap that chews its leg off." And we're there to try to help open the trap, rather than have her have to chew her leg off. So, she sees herself in a very difficult situation with no other way out. And, maybe, she's never had contact with a pro-lifer, and so she thinks, "Oh, yeh, I've heard about these kind of people, you know. They're just here to tell me I'm going to Hell or, you know, something like that." But what if we have what that woman wants and after a few seconds or a few minutes of conversation, she changes her mind, and many have. There's so many women that could be here today to testify of a situation like that. So, was that

harassment? Was that wrong to persist? And you could harass someone in that situation. Sure, you could. But if you're there for honest, genuine help to that person, then that's not harassment.

GROFF: Except that it's their choice to either accept what you have to offer or reject it and from which time, I think, you are then required to leave them alone, and not bother them. Once they said, "Thank you but no thank you " that should be all that they have to do to get you away from them. And I think I hear you sayin', "No. I have a right to continue after they've said, 'Don't continue, '" and I think that's where I have trouble with, you know, with your testimony. You're saying that you should have a right to continue to harass them when once they've told you they're not interested which is, I think, all any person should have to say to anyone else when he's approached by someone, and that is, "I, I'm not interested."

FAUSTIN: May I answer that? Then, why don't we pass a law against Kirby Vacuum salesmen that after the first time the customer says, "I don't think I'm interested in this," the guy has to leave?

GROFF: He does.

CHAIR: He does.

GROFF: He does.

(Inaudible)No, he sold two vacuums.

LOTS OF LAUGHTER

FAUSTIN: You know, the truth is, some people would throw you out of their home, but a lot of people would just sit there, and salesmen know that. They'll keep going.

CHAIR: Thank you. Connie Anderson.

ANDERSON: Thank you, Madam Chairman. This is quite an act to follow, I'll have to admit. I represent the National Organization for Women, and I speak for all the members in

the State of Colorado. I also speak, I am the official spokesperson for the National Organization for Women, and I am the State Coordinator. I would like to also speak for the many representatives from our organization that have staffed barricades. I have been rather intrigued over the many people who seem so benevolent, or so benign, who testified up here, when it has been my experience both here and working as an escort in the Denver area, and, also, in Wichita. I was there, and there was nothing kind or benevolent about it. The law recently has stated that when a woman says no to a man as far as sexual assault is concerned he'd better accept that. Now, I think maybe there is a parallel to be drawn here that when a woman says no, I do not care to hear anything about this subject that no should be respected. I'm not going to belabor all of the issues that have been brought up. You' ve spent many long hours here. I will indeed make my testimony short but I want to reaffirm our position from the NOW organization in Colorado that we would appreciate and support your vote in favor of 1209. Thank you.

CHAIR: Thank you. Are there questions? That is everyone who signed up. Senator Feeley, would like to sum up?

FEELEY: Yes, and I will be brief. I thank the Committee for their patience throughout this afternoon in the hearing and I know that the Committee received a lot of written information one of which was a report from the Bill of Rights Committee of the Colorado Bar Association which examined the constitutionality of this statute and found that indeed it was constitutional. Ah, I think that case after case where a similar Bubble Ordinance has been tested, that the courts have uniformly found that these similar statutes are constitutional and I also think that the point was very well made by Ms. Perkins who stood here at least, excuse me, everyone on this

Committee is at least 8' away from her and I think everyone heard her offer of a solicitation of a handbill and everyone had the opportunity to make the decision as to whether or not they wanted to receive that handbill or whether they did not want to. I think that the 8' restriction is a very reasonable restriction and doesn't impede any education, it doesn't impede any discussion, I think that this bill is very carefully drafted balance of the constitutional rights and I would ask for a favorable vote on House Bill 1209. Thank you.

CHAIR: Are there questions? Comments? All right. Then the bill is on the table.

MAN: Can I look at the materials before

CHAIR: We'll take a 5 minute recess.

HOPPER: Senator Wham, can I ask you one thing?

CHAIR: Senator Hopper.

HOPPER: I would just like to say to whoever it was that said that we weren't picking this up, there, the things that we did pick up, I believe, were handed to the staff and he passed them out. These were not handed to the staff. They were just left on the table. So, it's not that we were ignoring it. It's just that there's a way of doing things.

UNIDENTIFIABLE: I was refused the right to hand that to a staff member.

CHAIR: As they are being passed out, we will take a 5-minute recess - 5 minutes only.

- - - RECESS - - -

CHAIR: Thank you. House Bill 1209 is on the table. Senator Hopper.

HOPPER: I move the Bill.

CHAIR: Are there comments, questions, amendments? Senator Lacy.

LACY: Thank you, Madam Chairman. I would like to make a couple of comments. You've all (inaudible) getting a little intense earlier in this discussion, but I, I would like to. This is, this is the position that I started out when 1209 came out. As the sponsor knows, I was in opposition to, as I stated earlier, the pro-life, pro-choice, proabortion issue is something that is really, really starting to wear on me. I have a great deal of respect for those of you who are sidewalk counsellors. I think that the job that you're doing is very well. The problem is, is the type of people that are not here, in this audience today, that is causing the problem, and if you were just in the process of handing out leaflets or trying to help somebody like this beautiful young woman who had the opportunity to have her baby, and it was through the help and the guidance of you, you know, that's a marvelous experience. She had the opportunity to accept or reject. The last gentleman talked about harassment and whether or not we believe that harassment was the major part of this and if we did, that in fact this Bill was probably a good idea, and I just want to share with you for a minute. You know, I don't know that I'll get anywhere with you, and it's probably a useless cause, but I guess I need to just, to just try to do it, because the people that have called me during my campaign once they found out I was a pro-choice candidate and what I went through, not being pregnant, not looking to have an abortion, and winding up having to hang up on people, winding up having to have other people drag me out of a middle group that has surrounded me and just hammering me with, you know, comments after comments. You know, I wasn't physically abused. This is true. But I considered it harassment, and moving around and trying to keep an objective viewpoint. And that's the one thing with 1209 that I have tried to do is keep an objective viewpoint. I don't know that this Bill has

anything to do with abortion. Unfortunately, we've all interjected it into this. I, uh, when you look at the people that are going to these clinics, and it's not the pro-lifers, it's the pro-choice people, too. We've got people on both sides of the aisle that spend time at those clinics that are harassing, in fact, those people who are going to those clinics for a variety of reasons. I would just ask you to, to think about this in another vein, and you may not be the ones that are doing the harassing, but then if you're wanting to carry on your cause, you need to try to identify some of those people that are, so we can pull 'em back and let some of the jobs that need to be done, because we wouldn't be here today if there wasn't harassment that is taking place in front of these clinics.

CHAIR: Senator Ruddick.

RUDDICK: I'll be brief. It never ceases. (Several minutes of inaudible testimony.)

CHAIR: Any comments. Senator Mutzebaugh.

MUTZEBAUGH: Well, I think it's a hard case, and I would hope that pro-life people who are like the pro-life people here today continue to do the work they're doing, 'cause I think it's important and I do think that it may make a difference. I think education is the real difference, and I think understanding each other is a difference, too. I mean, as a Christian, I know there are people that don't do things right all the time, and we've got to forgive them and try to convince them to do a better job, and so I, I would hope that, that this Bill brings people together and not push 'em apart. I don' t want to vote for anything that would help fund abortions at the state level or at the federal level, and I don't want to do anything else that pushes abortions in any way whatsoever, but then, again, if people want to make a choice, I think they, they deserve the right to decide what they need to do, and I think the more information they get, the better

off they are, and we should somehow encourage people to take information on both sides of this issue, somehow. I know the Hare Krishnas are always approaching me at the Airport, so I' ve had a lot of experience with people who come up and hand you things, and, so, we probably all have. If you want to take it, that's one thing. If you don't, I suppose you could say you don' t want it, so I think there is some choice out there but, and I don't know that this will change the choice one way or the other. I hope not. I hope people will still continue to work to do the right thing for what they believe. That's probably all I have to say on the subject.

CHAIR: Anyone else? Staff, call the roll.

CLERK: Senator Cassidy?

CASSIDY: Aye.

CLERK: Senator Groff?

GROFF: Aye.

CLERK: Senator Hopper?

HOPPER: Aye.

CLERK: Senator Lacy?

LACY: Aye.

CLERK: Senator Mutzebaugh?

MUTZEBAUGH: Aye.

CLERK: Senator Pastore?

PASTORE: Aye.

CLERK: Senator Ruddick?

RUDDICK: Aye.

CLERK: Senator Blickensderfer?

BLICKENSDERFER: Aye.

CLERK: And Madam Chairman?

CHAIR: Aye.

CHAIR: The Bill passes 9 to zero. Thank you all.

CHAIR: House Bill 1209

STAFF: House Bill 1209, Representative De Gette and Senator Feeley. Concerning the protection of a person's access to health care facilities.

CHAIR: Senator Feeley.

FEELEY: Thank you Madam Chair. We're having an interesting day this morning.

CHAIR: Keep it faster here.

FEELEY: Members, House Bill 1209 is a bill that has generated a great deal of interest, but actually, not a lot of controversy. This is a bill, which when you read it I'm sure you will agree is actually limited in scope. This is not a bill about abortion. This is not a bill about First Amendment rights. This is a bill about simply walking up a sidewalk to a healthcare facility to seek counselling or treatment and it's a matter of common courtesy. All of us are familiar with what's occurred at some of the healthcare clinics throughout the country. The violence that we saw in Wichita two summers ago, the tragic shooting that we saw just last week in Florida, in Pensacola. This is a problem that seems to be escalating around the country. House bill 1209 is a bill which is based upon two ordinances, one in the City of Boulder, one in Denver. The one in Boulder has been in place since 1986, has survived a constitutional challenge in the federal courts here in Colorado and I believe that both ordinances have gone a long way to stem the increasing confrontations that happen outside of healthcare facilities. Let me get to the bill. Section 1 of the bill has really two provisions. The first provision creates, says that a person commits a class III misdemeanor if that person knowingly obstructs, detains, hinders or impedes another's access to a healthcare facility. The second part of the bill creates what we've been referring to as the bubble. The second part creates

a zone, an 8 foot zone around a person approaching a healthcare facility, approaching or exiting a healthcare facility, and provides specifically that a person commits a Class III misdemeanor if, within 100 feet of the front door of a healthcare facility, someone approaches within 8 feet, without consent. Now let me just describe 8 feet. If Senator Wells leaned back in his chair, the distance from me to Senator Wells, as he's doing at the moment, is about 8. I suspect that if Senator Wells had a point to make from that distance he'd be able to make that point very well.

WELLS: Thank you.

FEELEY: And he does regularly. That's correct. That's about the 8 feet distance that we're talking about in this bill. The most important part of this section of the bill, however, involves the consent. We're stepping it off right now. That's about right. And I'm certain that if Senator Schroeder had a point to make, he could certainly make his point. The most important aspect of this part of the bill, however, involves the consent. If someone is approaching a healthcare facility and consents to a discussion, reaches out to obtain a handbill, consents to engage in a discussion, consents to read a sign, whatever, then that consent is given and no misdemeanor is committed.

Section 2 of the bill creates a civil remedy. That is that damages or injunctive relief would be appropriate if someone violates, excuse me, prohibits or hinders the access or exit from a healthcare facility. I want to make it clear that this civil remedy does not extend to an evasion of the 8 foot bubble. It only deals, when there's an actual hindrance to the health care facility, when someone stands in the way. This bill is not the bill that's going to prevent the type of tragedies that occurred in Florida last week.

It might prevent, however, something from escalating into that kind of tragedy. It's going to prevent that "in your face" that an unwilling listener might not want to engage in. We in fact had an incident in the Senate Judiciary Committee hearing where someone who came to speak against the bill presented all the members with a card. On the back of the card was a message and when you turned the card over there was a photograph. An absolutely horrendous photograph. Not one of the members of the committee had a choice. All of a sudden it was in their face, and this bill is designed to prevent that sort of communication. When a speaker's interest conflicts with those of an unwilling listener, the right of every person to be let alone has to be placed on the scales of the right of others to communicate. That's what this bill does. I believe it's a carefully balanced well-drawn bill that protects both the right of the speakers to communicate and protects the right of people seeking medical care and counselling to approach a healthcare facility. If I haven't already, I would move House Bill 1209 and I would request there were no committee amendments and I would request its favorable adoption.

CHAIR: The motion is before us. Members, is there any discussion? Senator Roberts.

ROBERTS: Thank you. In order to discuss this bill, we're going to get closer than 8 feet here, Senator Feeley, but I have some real constitutional problems with what you're doing here and I don't believe this will pass constitutional muster. There are numerous cases decided by the Supreme Court that go back for quite a number of years that protect the right to distribution, distribute leaflets on public ways and if that's a form of free speech protected by the First Amendment then you've got to have some kind of compelling reason for restricting the right of free speech, and particularly when you're talking about

restricting the right of free speech, which includes distribution of pamphlets, on a public thoroughfare, a public sidewalk. So, even if you were inside an airport there would be certain tests to be passed in order to restrict the right of free speech, but I don't find any compelling state interest in restricting the right of free speech on a sidewalk in front of a healthcare facility.

CHAIR: Senator Feeley.

FEELEY: Thank you. Senator Roberts, certainly First Amendment rights are of paramount importance but courts have recognized for a great period of time that free speech is not absolute, as what I mentioned before, when a speaker's interest conflicts with those of an unwilling listener, we've got to have a balancing test here. What we're dealing with is the right to be let alone, the right to not have something stuffed in our face. The right to be let alone, just as Brandeis said, is the most comprehensive of rights and the most valued by civilized men. I think he was right on that point. The reasonable time, place and manner restrictions on First Amendment rights was dealt with in a 1968 case, United States v. O'Brien, which came up in the context of the court finding that there is a reasonable restriction that could be imposed on people exercising their free speech rights by burning their draft card. And since that case has been decided, which set out the specific requirements that a court has to examine when looking at the Constitutional validity, cases have uniformly held that the type of restriction, a well-drafted, well-balanced restriction that insures the alternative means of communication, the courts have held that those are valid. In fact, the Boulder ordinance, in 1986, was challenged in the federal district court here in Denver and was found to pass constitutional muster. In the State of Washington, the Supreme Court of the State of Washington has upheld a 100 foot limit. That passed constitutional muster, and

I think that even Senator Wells would have a hard time making his point from a hundred feet away. He agrees.

In the City of San Diego, a similar ordinance was passed which placed sidewalk protestors 60 feet outside of the front door of a healthcare facility, and in fact put them across the street. And in each case, in fact uniformly, in each case, all of those ordinances which have been challenged have met Constitutional muster. I suspect that this one will and I really base that suspicion of Judge Weinshienk's decision with regard to the Boulder ordinance. I think this is a good bill that balances competing interests very well.

CHAIR: Senator Roberts.

ROBERTS: Well, I'm sure we'll find out. How do we determine whether or not someone has given consent?

CHAIR: Senator Feeley.

FEELEY: Well obviously that's a factual issue, but I'm glad you raised that point because, let me just answer that by way of analogy. In the Boulder ordinance, the consent specifically has to be oral consent. That is, there has to be an acknowledgement by the person that wants to receive the information that yes, I'd like to engage in a conversation. It has to be oral. This bill doesn't even go that far. This bill, the consent can be much more easily given, as I noted. If you reach out to accept a handbill, if you acknowledge that I'd like to engage in a conversation or sidewalk counselling, that's the consent that's appropriate. If I approach you to read a yard sign or any type of sign, that type of consent would mean the misdemeanor is not committed.

CHAIR: Senator Roberts.

ROBERTS: So, are we going to have a factual issue here in every case as to whether or not consent was given. Is that what we're going to do?

CHAIR: Senator Feeley.

FEELEY: Every case involves determination of factual issues, otherwise it's not a case. Yes.

ROBERTS: We're going to have this kind of nebulous, whether nor not consent was given, and if the person motioned to you or looked your way, perhaps that would constitute consent?

CHAIR: Go ahead, Senator Feeley.

FEELEY: Yes, I think that would be consent and therefore, I don't think a misdemeanor would have been committed. Yes.

CHAIR: Senator Roberts.

ROBERTS: Well suppose the person has a voter initiative relating to taxation in the State of Colorado and is trying to get signatures, what do they do? Stay away from healthcare facilities?

CHAIR: Senator Feeley.

FEELEY: I think that within the 8 foot you'd need to be careful, and if Senator Wells convinced me that he had a voter initiative and he'd like to speak to me about it and I consented to that, there's no problem with that.

CHAIR: Senator Roberts.

ROBERTS: Well I'd like to ask you, in order to warn people that they're near a healthcare facility and let's see, how close can, you have this 8 foot limit and how close are you to a healthcare facility when the 8 foot limit applies?

FEELEY: Madam Chair.

CHAIR: Yes.

FEELEY: Specifically, the bill provides that within 100 feet of the front door of the healthcare facility.

CHAIR: Senator Roberts.

ROBERTS: Well then what I'd like to propose as an amendment, is that we provide a large sign on the front of every

healthcare facility that warns people that if you're within 100 feet of this entrance, that you must stay 8 feet from anyone unless they give or grant their consent to you to give them a leaflet or talk to you. Would you accept such an amendment, Senator Feeley?

CHAIR: Senator Feeley.

FEELEY: Senator Roberts, frankly I don't think that is necessary. I think that the healthcare facilities are easily recognizable and well identified right now. I think that the application of the ordinance in Denver and Boulder, for at least 8 years in Boulder, that problem hasn't arisen. And I also think that, while this isn't necessarily limited to women's healthcare facilities, I think that the people who are doing sidewalk counselling outside of those facilities, have been well-educated, and it's worked very well, and I don't think that a sign would be necessary.

CHAIR: Is there any further discussion? Senator Roberts? Is there further discussion? Senator Feeley, wrap up.

FEELEY: Thank you. I would ask (inaudible).

CHAIR: Excuse me, there is. Senator Gallagher. Would you care to speak Senator Gallagher? The motion before us then is the adoption of House Bill 1209 on second reading. All those in favor please say aye. Opposed no. The ayes have it. 1209 is adopted on second reading.

END OF TAPE.

DEFENDANTS' JOINT MOTION FOR SUMMARY JUDGMENT

COME NOW Defendants, the City of Lakewood, Colorado; Gale A. Norton, in her official capacity as Attorney General for the State of Colorado; and the State of Colorado, Roy Romer,

Governor, and, pursuant to Rule 56, C.R.C.P., request that the Court enter summary judgment in their favor on all Claims for Relief set forth in the Verified Complaint. In support of this Motion, Defendants incorporate their Brief in Support of Joint Motion for Summary Judgment, which is being filed contemporaneously with this Motion, and further state as follows:

1. Pursuant to Rule 56(c), C.R.C.P., summary judgment is appropriate when "there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law." In this matter, there are no genuine issues of material fact concerning the Plaintiffs' claims.

2. Section 18-9-122(3), 8B C.R.S. (1993 Supp.), limits speech only by imposition of reasonable time, place and manner restrictions, is neither vague, overbroad, nor an unlawful prior restraint on free speech and is, therefore, constitutional.

WHEREFORE, for the reasons set forth above and in the Defendants' Brief in Support of Joint Motion for Summary Judgment, Defendants request the Court to enter summary judgment in their favor and against the Plaintiffs on all claims for Relief set forth in the Verified Complaint.

AFFIDAVIT OF KATHERINE GALLOWAY

I, Katherine Galloway, being first duly sworn upon oath, state:

1. I am the office manager for Dr. Charles H. Gartner. Dr. Gartner's practice is in general obstetrics and gynecology, including the care of pregnant women; infertility counseling; routine gynecological checkups, including cancer screening through pap smears and colposcopy; treatments for abnormal

pap smears, to prevent the development of cervical cancer; and abortions. Abortions account for less than one percent of Dr. Gartner's practice. Dr. Gartner accepts Medicaid, and so has a number of low income patients.

2. Beginning in January of 1993, Dr. Gartner's office, located at 1145 S. Federal Boulevard in Denver, has been the target of antiabortion demonstrators almost every day. Initially, we had no security, and although the demonstrators trespassed in our parking lot and harassed the patients coming to our offices, it was difficult to obtain a police response in time to prosecute them under either trespass laws or the Denver "bubble" ordinance (Denver Code § 38-114, which requires that, within 100 feet of the entrance to a health care facility, a demonstrator must withdraw or step back eight feet from the person they are addressing if that person so requests).

3. Between January and August of 1993, the number of patient visits to our office dropped. I believe this was a direct result of the tactics employed by the demonstrators, who would surround patients cars' after they parked, and aggressively approach patients, sometimes yelling at them and thrusting signs or literature in their faces. Patients responded to the demonstrators by expressing fear for their physical safety or anger at the harassment.

4. Beginning in August of 1993, we have had to hire off--duty deputy sheriffs and install video cameras to monitor the parking lot and document violations of the bubble ordinance. We have also upgraded our alarm system and hired a security consultant. Since these measures, the demonstrators have kept out of the parking lot and have generally observed the bubble ordinance, knowing they will be prosecuted for violations. Since we have been able to enforce the laws, a number of patients have told me that they feel much better without the

demonstrators approaching them too closely. The number of patients canceling appointments due to fear of the demonstrators has decreased.

5. Since we instituted these security measures, demonstrators have continued to appear outside our offices. I have observed that the demonstrators, their signs, and the fact that some demonstrators offer literature can still be seen and heard from distances greater than eight feet.

6. Several patients coming to our office for prenatal care have told us that they will not return, although they have no problem with Dr. Gartner or his practice, because they do not want to endure harassment from the demonstrators. Dr. Gartner is one of the few obstetricians in private practice in Denver who takes Medicaid. Forcing patients away from our office may therefore limit their access to an obstetrical specialist.

7. I know Leila Jeanne Hill, and have observed her demonstrating outside our office. I have been able to hear her voice, read her signs, and see her waving leaflets at distances greater than eight feet.

8. I have personal knowledge of the statements contained in this affidavit, and I am competent to testify to the facts I have stated.

AFFIDAVIT OF WARREN M. HERN, M.D., M.P.H., PH.D.

I, Warren M. Hern, M.D., M.P.H., Ph.D., being first duly sworn upon oath, state:

1. I received my medical degree from the University of Colorado School of Medicine in 1965. I received a Master of Public Health degree from the University of North Carolina

School of Public Health in 1971, and I received my Ph.D. in Epidemiology from the same institution in 1988.

2. I specialize in two areas of medicine: outpatient abortion practice and epidemiology.

3. Exhibit A, attached to this affidavit, is a true and correct copy of my resume.

4. I maintain a private practice in outpatient abortion at the Boulder Abortion Clinic, 1130 Alpine, Boulder, Colorado.

5. My clinic has been the target of picketing and demonstrations since it opened in 1975. The demonstrations became more aggressive in 1985.

6. I observed that patients experienced considerably more stress when demonstrators were present, and the level of stress corresponded to the aggressiveness of the demonstrators. As explained in my paper, "Proxemics: The Application of Theory to Conflict Arising from Antiabortion Demonstrations," attached as Exhibit B, social science research has shown that approaches by strangers closer than approximately three yards are stressful and are interpreted as a threat. I have observed a number of physiological symptoms in patients after they were exposed to aggressive demonstrating.

7. Patients would come in to my office shaking, tearful, and in great distress from harassment and insults, and from the fact that the demonstrators approached them very closely. Clinic staff would have to calm them down for some time, which often delayed their medical care.

8. Patients experienced a "fight-or-flight" reaction, especially when demonstrators approached closely. Patients exhibited evidence of this reaction, such as pallor, shaking, sweating, pupillary dilation, palpitations, hyperventilation, and urinary retention. These reactions increased the difficulty and risk of administering medical treatment to the patients, as set

forth in more detail in my paper (Exhibit B).

9. Urinary retention made it difficult to perform a pelvic examination and accurately determine the size and condition of the patient's uterus, which is essential to safe completion of a surgical abortion.

10. Hyperventilation can lead to agitation and muscle spasms, making it more difficult for patients to stay still during medical treatment, and thus increasing the risks of complications such as perforating the uterus during the performance of an abortion.

11. In extreme cases, hyperventilation can lead to loss of consciousness, which is dangerous in and of itself, and which also increases the risk of complications during a surgical procedure such as an abortion.

12. Since 1987, section 5-3-10 of the Boulder Revised Municipal Code has required that demonstrators outside health care facilities must remain eight feet away from the person who is the target of their demonstrations, unless that person gives express oral consent for a closer approach.

13. Since passage of the Boulder ordinance, demonstrators have continued to appear outside my clinic. They can still be easily seen and heard, and patients still experience some level of stress from their presence. However, the ordinance shows the demonstrators that there is a line beyond which they cannot go, and allows the patients to obtain medical treatment without being subjected to the most aggressive and intrusive form of demonstrating. Because the patients are shielded from close physical confrontation, their stress levels are decreased and the medical risks posed by the presence of the demonstrators are also decreased.

14. I have personal knowledge of the statements contained in this affidavit, and I am competent to testify to the facts I have

stated.

AFFIDAVIT OF RUTH HOPFENBECK

I, Ruth Hopfenbeck, being first duly sworn upon oath, state:

1. I am a citizen of the United States and reside in the City and County of Denver, Colorado.

2. I am a member of the Board of Directors of Planned Parenthood of the Rocky Mountains.

3. I am also a volunteer patient escort at the Planned Parenthood medical clinic at 20th and Vine Streets, Denver, Colorado, for an hour to an hour and a half every Wednesday morning.

4. I have been a patient escort at the Vine Street Clinic for four years.

5. Escorts meet patients outside the clinic doors, and accompany them into the clinic. Our purpose is to get them into the clinic as fast as possible, while providing a buffer between the patient and the verbal assaults and physical intimidation by demonstrators outside of the facility.

6. On Wednesday mornings, there are usually five to fifteen demonstrators in front of the clinic, protesting the performance of abortions at the clinic.

7. In the City and County of Denver, § 38-114 of the Denver Code requires that, within 100 feet of the entrance to a health care facility, a demonstrator must withdraw or step back eight feet from the person they are addressing if that person so requests. Since passage of this ordinance in November of 1990, I and patients I have escorted have benefited from the ordinance.

8. On one occasion, while another escort and I were parking a patient's car, demonstrators surrounded the car, slapped

their signs against the windshield, and yelled at and taunted us. I was able to say, "Eight feet back, please," and they moved back so that I was able to move the car.

9. On another occasion, a patient and her mother were entering the clinic on foot. They were immediately surrounded by demonstrators, who shoved signs in their faces, and yelled at and taunted them. I and several other escorts quickly moved toward the mother and daughter. The young woman was in tears and her mother was shaking. We asked the demonstrators to stand back eight feet, which they did. We were then able to escort the patient and her mother into the clinic. Without the ordinance, we would not have been able to get the patient into the clinic without physical contact with the demonstrators.

10. Demonstrators at the Vine Street medical clinic yell and scream, calling patients, their family members, and escorts "murderers." They tell patients they are going to die, and taunt patients and their family members with inflammatory and abusive language, including racial epithets (such as "Mammy" directed at a black patient). These confrontational tactics are particularly stressful at close range.

11. It has been my experience that the eight foot buffer zone created by the Denver ordinance is effective in preventing physical contact between clinic patients and staff and the demonstrators outside of the Vine Street clinic. It creates a small zone of safety around patients seeking medical services at the clinic, and reduces the threatening and intimidating impact of the demonstrators' activities.

12. I have been able to hear the demonstrators, read their signs and observe that they are offering literature, all from distances greater than eight feet.

13. I have personal knowledge of the statements contained in this affidavit, and I am competent to testify to the facts I have

stated.

AFFIDAVIT OF NANCY JENKINS

I, Nancy Jenkins, being first duly sworn upon oath, state:

1. I am a citizen of the United States and reside in the City and County of Denver, Colorado.

2. Since 1988 to the present, I have volunteered as an escort at the Planned Parenthood medical clinic at 20th and Vine Streets, Denver, Colorado, for three to five hours a week.

3. During demonstrations outside the Vine Street clinic from 1988 through 1990, I had to physically assist patients, some no more than 12 or 13 years old, to force through masses of demonstrators in order to get into the clinic. Demonstrators jostled patients, screamed at them, and thrust signs and pamphlets in their faces. I was shoved and hit by demonstrators trying to reach the patients, but it was impossible to pick out the person responsible for the physical violence from the midst of the crowd. I found the demonstrators threatening and intimidating, and, judging by the patients' reactions, so did they. Patients would arrive in tears, shaking, or hanging on to me so hard they left marks.

4. I have also worked as a part-time employee for Planned Parenthood, phone counseling, making appointments and taking medical information from patients, before they arrive at the clinic, and after, for follow up which is required for all patients. Again, patients would arrive, become very emotionally upset, crying and shaking, due to the intimidation of all the demonstrators, and we would have to calm them down before they could receive medical treatment.

5. Since 1990 in the City and County of Denver, § 38-114 of the Denver Code requires that, within 100 feet of the

entrance to a health care facility, a demonstrator must withdraw or step back eight feet from the person they are addressing if that person so requests.

6. Since passage of the Denver ordinance, I have observed that demonstrators have continued to appear daily outside the Planned Parenthood Vine Street clinic, voicing their opposition to many of the services offered at the clinic. They carry placards, speak, and offer literature. I have been able to hear the demonstrators, read their signs and observe that they are offering literature, all from distances greater than eight feet.

7. The Denver ordinance has operated to give patients, volunteers and staff a buffer zone which lessens the intimidating and physically threatening aspect of the demonstrators' activities, at all medical and health care facilities, including hospitals and private offices. I would like to also state that as a person who has faced a life-threatening illness, I take comfort in having this ordinance to protect me when using any medical facility or hospital that may have demonstrators for any variety of reasons.

8. On one occasion, the ordinance allowed a mother who was picking up her daughter after a routine appointment to get demonstrators who had surrounded her car to move back so that, with the help of myself as a volunteer escort, she could safely enter the clinic parking lot.

9. I personally have used the ordinance to protect myself from intimidation and interference when I go out on the street to give directions and information to patients and their families.

10. I have also used the ordinance to decrease the likelihood of violence at the clinic. Demonstrators at the clinic taunt, threaten, and insult patients and their family members or friends. The family members or friends sometimes respond angrily. If the demonstrators are told to stay eight feet away,

that gives me a few seconds to step between the family member and the demonstrator, and defuse the confrontation before it becomes violent, protecting all parties involved including the demonstrators. The demonstrators often also use the ordinance against patients' family members and/or escorts.

11. In 1981, I had an abortion because I was on chemotherapy to treat life-threatening cancer. If I had been subjected to the intimidating, threatening behavior by demonstrators that I have witnessed as an escort when I went in for an abortion, it would have greatly increased the trauma and stress of that already traumatic experience. And I was lucky, as I was alerted by staff to be prepared in case there were demonstrators, so I would not have been taken totally by surprise.

12. I have personal knowledge of the statements contained in this affidavit, and I am competent to testify to the facts I have stated.

AFFIDAVIT OF DR. MARIANNE LA FRANCE

I, Marianne La France, being first duly sworn upon oath, state:

1. I am a permanent resident of the United States and a Canadian citizen and reside in the City of Gloucester, Massachusetts.

2. I graduated from and received a B.A. (Psychology) 1969 from the University of Windsor, Ontario, Canada. I received M.A. and Ph.D. degrees (Social Psychology) 1971 and 1974 respectively from Boston University.

3. I am presently a Professor of Social Psychology in the Department of Psychology, Boston College, Chestnut Hill, MA.

4. I have conducted research and published on the theory of

proxemics, the cultural use of space. (La France, 1978, 1979; Polit and La France, 1977)

5. I have been admitted and testified before the courts of this country as an expert witness concerning proxemic theory and research results, including the United States District Court far Colorado, (Buchanan v. Jorgensen, 1987).

6. I can state that there are appropriate distances for interactions in American culture and that they are specific and measurable. It is well known that intrusion at close distances are interpreted as threats, can be considered a hostile act, produce psychophysiologic reactions, such as stress, reduce communication and are often debilitating.

7. I can state that the scientific evidence, based upon research into the subject matter of proxemics indicates the following findings:

A close interpersonal approach by a stranger in a public setting is stressful. Interpersonal space is something that we need in order to protect ourselves. Close interpersonal distance is allowed to those people whom we know, whom we trust, and with whom the interaction is likely to be positive or at the very least neutral. The expectations are very clear that people are entering this mutually; they both agree to this spatial relationship.

As people approach more closely, there is increased eye contact and one is able to see facial expressions. One is able to detect the possibility of aggressive posturing. At close interpersonal distances, the effect is magnified and the stress reactions is proportionate. The effect of stress in an interpersonal context in which strangers are involved is monotonic: as distance lessens between people, stress increases.

Close interpersonal distance means violating the expected

norms for any interaction among strangers. We do, in a variety of subtle ways, give permission. If that permission is not granted, people feel violated. For example, as children age, as they grow up, the distances they adopt become greater.

8. I can further state that an individual would experience a sense of invasion if communication in which strangers are involved took place from less than 8 feet.

The first basic assumption is that strangers should adopt the furthest interpersonal distance that the physical environment allows. The second concerns the expectation of interaction. If I expect to have interaction with you, closer distances are allowed. If I do not expect and do not want interaction, the distance adopted will be further away and there will be a stress reaction if that distance is collapsed to less than where I feel comfortable.

A third factor is the tone of the interaction. A close interpersonal distance in a context which is negatively toned will exacerbate the stress already experienced.

Health and medical problems are matters that most Americans would describe as being of great privacy. Even in medical schools, nurses, doctors, and interns are instructed in order to be more sensitive to the distance adopted in providing health care.

Research indicates that 8 feet is not only sufficient in terms of communicating a verbal message; research results would probably recommend that specific distance. At distances of about 3 yards, there is greater influence, more openness, greater communication, and more comprehension of the message than at close interpersonal distance. Close interpersonal distance tends to create an arousal context within which the content of the message may not be heard

(Mehrabian & Williams, 1969).

There is some negotiation. Both people convey through a variety of verbal and nonverbal means that a distance is appropriate or inappropriate. If a distance is too close in one person's frame, there is stress and discomfort. The expectation in our culture is that at less than 3 yards, people begin to expect the possibility of tactile contact. That's why messages, typically nonverbal, are engaged in before 3 yards.

9. I have personal knowledge of the statements contained in this affidavit, and I am competent to testify to the facts I have stated.

AFFIDAVIT OF SUSAN MOSTOW

I, Susan Mostow, being first duly sworn upon oath, state:

1. I have volunteered as a patient escort at the Planned Parenthood medical clinic at 20th and Vine Streets, Denver, Colorado, for over four years. I am at the clinic for an hour to two hours every Wednesday.

2. When I first began escorting outside the Vine Street clinic, demonstrators would sometimes surround patients on the sidewalk, screaming at them from very close distances and thrusting signs and literature at them. Patients would respond by starting to cry, grabbing on to me, and expressing fear for their personal safety.

3. I personally felt physically threatened and intimidated to be surrounded by demonstrators at such close distances (less than a foot away).

4. Since 1990 in the City and County of Denver, § 38-114 of the Denver Code requires that, within 100 feet of the entrance to a health care facility, a demonstrator must withdraw

or step back eight feet from the person they are addressing if that person so requests.

5. Since passage of the Denver ordinance, I have personally observed demonstrators continuing to appear outside the Vine Street clinic. The demonstrators and their signs are still clearly visible and audible from distances greater than eight feet. From distances of eight feet or greater, I have been able to see that some demonstrators are offering literature. Since passage of the ordinance, some patients have taken literature from the demonstrators. My experience has been that it is impossible to ignore the demonstrators even when they are more than eight feet away.

6. Sometimes patients approach the clinic on foot, and I have gone out onto the street or sidewalk to escort them. I have informed the patients of the Denver ordinance and they have used it or I have used it to require the demonstrators to back up to a safer distance. Sometimes I have even informed patients inside the private parking lot about the ordinance. The patients express relief and approval to know that they have some protection.

7. Family members or friends accompanying patients sometimes respond angrily to the insults of the demonstrators, and I have had to physically restrain them from confrontations. It is easier to do this if the demonstrators are not right next to the family member or friend.

8. I have personal knowledge of the statements contained in this affidavit, and I am competent to testify to the facts I have stated.

PLAINTIFF LEILA JEANNE HILL'S RESPONSES TO DEFENDANTS' REQUESTS TO ADMIT

Comes the Plaintiff, Leila Jeanne Hill, by counsel, and answers the Defendants' Requests to Admit, as follows:

Request for Admission No. 1. Admit that you have never been cited, detained, arrested or referred for prosecution on a charge of violating Section 18-9-122(3), Colorado Revised Statutes.

Admitted.

Request for Admission No. 2. Admit that you have never been cited, detained, arrested or referred for prosecution on a charge of violating Section 5-3-10 of the Boulder Revised Municipal Code.

Admitted.

Request for Admission No. 3. Admit that you have never been cited, detained, arrested or referred for prosecution on a charge of violating Section 38-114 of the Denver Revised Municipal Code.

Admitted.

Request for Admission No. 4. Admit that you have engaged in and continue to engage in sidewalk counseling as defined in paragraph 18 of the Complaint within 100 feet of the entrance to health care facilities in the City of Boulder, Colorado since June 5, 1987.

Admitted.

Request for Admission No. 5. Admit that you have engaged in and continue to engage in sidewalk counseling as defined in paragraph 18 of the Complaint within 100 feet of the entrance to medical or health care facilities in the city of Denver, Colorado since November 19, 1990.

Admitted.

Request for Admission No. 6. Admit that you have engaged in and continue to engage in sidewalk counseling as defined in paragraph 18 of the Complaint within 100 feet of the entrance

to medical or health care facilities in Colorado since April 19, 1993.

Admitted.

Request for Admission No. 7. Admit that you have engaged in leafletting within 100 feet of the entrance to a health care facility in Colorado since April 19, 1993.

Admiitted, with the qualification that Plaintiff Hill has been compelled as a result of the adoption of C.R.S. § 18-9-122(3) to act with great caution and circumspection not previously required in that activity.

Request for Admission No. 8. Admit that you have engaged in displaying signs within 100 feet of the entrance to a health care facility in Colorado since April 19, 1993.

Admiitted, with the qualification that Plaintiff Hill has been compelled as a result of the adoption of C.R.S. § 18-9-122(3) to act with great caution and circumspection not previously required in that activity.

Request for Admission No. 9. Admit that you have engaged in oral protesting, educating or counseling within 100 feet of the entrance to a health care facility in Colorado since April 19, 1993.

Admiitted, with the qualification that Plaintiff Hill has been compelled as a result of the adoption of C.R.S. § 18-9-122(3) to act with great caution and circumspection not previously required in that activity.

Request for Admission No. 10. Admit that normal conversational tones are generally audible at eight feet from the speaker.

Denied, with the explanation that such conversational tones may, or may not, be audible depending on a variety of unstated circumstances, such as the level of other noise in the vicinity, and the hearing ability of the listener.

Request for Admission No. 11. Admit that loud speech such as shouting is generally audible at eight feet from the speaker.

Denied with qualification that such shouting may, or may not, be audible depending on a variety of unstated circumstances, such as the level of other noise in the vicinity, and the hearing ability of the listener.

Request for Admission No. 12. Admit that Section 18-9-122(3) does not preclude any speech outside an eight foot radius of any listener.

Admiitted, with the qualification that the existence of the statute and the potential for enforcement through criminal prosecution, is intimidating and compels the exercise of great caution and circumspection not previously required.

Request for Admission No. 13. Admit that Section 18-9-122(3) does not preclude any leafletting or handbilling outside an eight foot radius of any recipient.

Admiitted, with the qualification that the existence of the statute and the potential for enforcement through criminal prosecution, is intimidating and compels the exercise of great caution and circumspection not previously required.

Request for Admission No. 14. Admit that Section 18-9-122(3) does not preclude any displaying any signs outside an eight foot radius of any other person.

Admiitted, with the qualification that the existence of the statute and the potential for enforcement through criminal prosecution, is intimidating and compels the exercise of great caution and circumspection not previously required.

Request for Admission No. 15. Admit that government has an interest in securing access to health care for its citizens.

Denied, with the explanation that the requested admission does not define "access" and it does not define "health care;" and with the further explanation that the government of the

State of Colorado has a variety of other interests, explicitly established in the Constitutions of the United States and of Colorado, which are directly jeopardized by the enactment and threatened enforcement of C.R.S. § 18-9-122(3).

Request for Admission No. 16. Admit that the fact that an individual is displaying a sign may be seen from eight feet away.

Admiitted, with the qualification that such a fact may or may not be observable depending on a variety of unstated circumstances, such as the visual acuity of the observer and the existence of obstructions to the line of sight of the observer.

Request for Admission No. 17. Admit that signs with sufficiently large print may be read from eight feet away.

Admitted with the qualification that there are various unstated circumstances which would affect visibility and readability of print at such distances, such as the visual acuity of the observer and the existence of obstructions to the line of sight of the observer.

Request for Admission No. 18. Admit that the fact that an individual is offering literature or a leaflet may be seen from eight feet away.

Admiitted, with the qualification that there are various unstated circumstances which would affect observability of such conduct at such distances, such as the visual acuity of the observer and the existence of obstructions to the line of sight of the observer.

Request for Admission No. 19. Admit that the attached copy is a true and accurate transcript of the hearings and debate before the Colorado General Assembly on the passage of Section 18-9-122(3).

Denied. The Plaintiff lacks the capacity to testify to the authenticity of this document.

Request for Admission No. 20. Admit that Section 18-9-122(3) does not authorize any person or entity, including government officials or entities, to prohibit or restrict leafletting, picketing, or oral protest, education or counseling, unless that person is the target of the leafletting, picketing or oral protest, education or counseling.

Denied.

Request for Admission No. 21. Admit that Section 18-9-122(3) does not authorize any government officials or government entity to prohibit or restrict the printing or preparation of any written material.

Admiitted, with the qualification that printing and preparation of handbills is a fruitless exercise in the circumstances created by the imposition of C.R.S. § 18-9-122(3).

Request for Admission No. 22. Admit that Section 18-9-122(3) does not authorize any government officials or government entity to seize any written materials.

Denied. Seizure of evidence of the commission of a crime, to wit, distribution of literature without consent being obtained at greater than eight feet distance, is, on information and belief, a standard police practice and procedure.

Request for Admission No. 23. Admit that Section 18-9-122(3) does not authorize any person or entity, including government officials or government entities, to prohibit or restrict the distribution of written materials, unless that person is the target of the distribution of written materials.

Denied. The statute, as written, prohibits a distributer of materials from handing out literature within eight feet of another person without the consent of that person.

PLAINTIFF LEILA JEANNE HILL'S RESPONSES TO DEFENDANTS' INTERROGATORIES AND REQUESTS TO PRODUCE

Comes the Plaintiff, Leila Jeanne Hill, and tenders her answers to the Defendants' interrogatories as follows:

Interrogatory No. 1. If you have denied any of the requests for admissions above, and if you have not already done so in making that denial, please identify all facts relied upon by you in making the denial and identify all persons known to you who have knowledge of those facts.

See the responses to requests for admission separately served.

Interrogatory No. 2. Please identify each and every individual or individuals answering each of the interrogatories, requests for admission and requests for production. Identify the interrogatory, request for admission or request for production to which each individual or individuals provided information utilized in the response.

Leila Jeanne Hill and James M. Henderson, Sr.: all requests to admit; all requests to produce; all interrogatories.

Interrogatory No. 3. Please identify each and every person consulted or assisting in answering these interrogatories or requests for admissions or in gathering the documents requested below.

James M. Henderson, Sr. and Everitt W. Simpson, Jr.

Interrogatory No. 4. Please identify all experts you intend to call at the trial of this matter. Your response should include, but should not be limited to: (1) a brief summary of the experts' qualifications; (2) a summary of the experts' anticipated testimony; (3) the substance of the facts and opinions on which the experts are expected to testify; and (4) a summary of the grounds for each opinion.

No expert witness has been identified at this time. As soon as an expert has been so identified this response will be supplemented.

Interrogatory No. 5. Please identify all witnesses you intend to call at the trial of this matter. Your response should include, but should not be limited to, a brief summary of the witness' anticipated testimony.

Leila Jeanne Hill, Audrey Himmelmann, Everitt W. Simpson, Jr.: Each will testify as to their free speech activities in the vicinity of abortion businesses in the State of Colorado, and the impact of C.R.S. § 18-9-122(3) on those activities.

Other witnesses have not been identified at this time. If, and as soon as such witnesses are identified, this response will be supplemented.

Interrogatory No. 6. Please identify all individuals who have knowledge of the facts and circumstances at issue in this matter.

The Plaintiffs and the Defendants have such knowledge. The members of the state assembly who sponsored the bill which created C.R.S. § 18-9-122(3) have such knowledge. Pro-life and pro-abortion activists across the State, on belief, have information about the facts and circumstances of this matter.

Interrogatory No. 7. In Paragraph 34 of the Complaint, you allege that, by operation of federal law, Section 18-9-122(3) does not apply to labor activities. Please describe, in specific detail, the federal law that precludes application of Section 18-9-122(3) to labor activities.

Title 29 U.S.C. §§ 152, 153, 158, 160.

Interrogatory No. 8. In Paragraph 35 of the Complaint, you allege that, by operation of Colorado law, Section 18-9-122(3) does not apply to labor activities. Please describe, in specific

detail, the Colorado law that precludes application of Section 18-9-122(3) to labor activities.

C.R.S. §§ 8-3-104 *et seq.*, the "Labor Peace Act."

Interrogatory No. 9. Please state whether you have ever carried any signs while engaging in sidewalk counseling as defined in paragraph 18 of the Complaint. If so, for each sign, state the size of the sign, the size of the lettering thereon, the size of any illustrations or pictures thereon, and the method for carrying or displaying the sign.

In lieu of a description thereof, Plaintiff Leila Jeanne Hill will produce one of each such sign for inspection and copying with the documents responsive to Defendants' Requests to Produce.

Interrogatory No. 10. Please state how far or close you physically came to a listener or recipient while engaging in sidewalk counseling as defined in paragraph 18 of the Complaint before Section 18-9-122(3) became law.

The distance varied depending on the responses I received. On some occasions, I had walked side by side with people; on other occasions, I was at a greater distance.

Interrogatory No. 11. Please state how far or close you physically came to a listener or recipient while engaging in sidewalk counseling as defined in paragraph 18 of the Complaint since Section 18-9-122(3) became law.

Without consent explicitly requested and received, I do not come within eight feet of a listener or recipient, to the best of my ability to judge that distance.

Interrogatory No. 12. Please state whether you have requested permission from any listener within 100 feet of the entrance to a health care clinic to come closer than eight feet from such person since Section 18-9-122(3) became law. If yes, for each instance, identify: (a) how you requested permission, including

what you asked the listener; (b) the verbal or physical response of the listener, and (c) whether you came within a distance of eight feet or closer from that listener after the response.

I have requested permission of listeners since C.R.S. §18-9-122(3) became law. I have no specific recollection of dates and times. In the circumstances in which I have requested permission, I have typically asked, "could I talk with you for a minute?' or something similar to that. The responses have varied: some have said yes, some have said no, and some have said nothing. When permission was granted, by word or gesture, I have approached closer than eight feet to the listener.

Interrogatory No. 13. Please identify any verbal or written comments made to you or in your presence by any member of law enforcement concerning the limitations imposed upon your speech or activities by Section 18-9-122(3), C.R.S., Section 5-3-10 of the Boulder Revised Municipal Code, or Section 38-114 of the Denver Revised Municipal Code. For each identified comment, please state:

a. The name and job title of the person making such comment.

b. The date and time that the comment was made.

c. The place where the comment was made.

d. The names and addresses of any other person hearing or seeing the comment.

e. The circumstances existing at the time the comment was made.

f. Your reaction to the comment at the time it was made, if any.

None.

Interrogatory No. 14. Please state specifically now, if any, your sidewalk counseling activities have altered or changed since Section 18-9-122(3) became law.

Prior to the enactment of C.R.S. § 18-9-122(3), I was not compelled to spend my time worrying about whether I was within 100 feet of an abortion business entryway, or whether I was being approached closer than eight feet by someone whose consent I would need to continue engaging in my free speech activities. Prior to the enactment of the statute, I was not under a continuous cloud of threatened criminal prosecution for offering literature to the public, displaying posters for all to see, or orally educating, counselling or protesting against abortion. As a consequence of the statute, I must now approach all these activities with great caution and circumspection.

PLAINTIFF LEILA JEANNE HILL'S RESPONSES TO THE REQUESTS FOR PRODUCTION OF DOCUMENTS

Request for Production No. 1. Produce copies of all documents identified, relied upon or referred to in responding to the interrogatories and requests for admissions set forth above.

There are no such documents, other than the legislative transcript provided by the defendants.

Request for Production No. 2. Produce copies of all documents which you intend to rely upon or introduce as exhibits at the trial of this matter.

The list of exhibits to be used has not been finalized at this time. The documents hereinafter described will, in all likelihood be used, and when any additional documents are identified, this answer will be supplemented.

The documents attached to the motion for preliminary injunction have already been produced to counsel for the defendants. In addition, literature I use in my sidewalk counselling is tendered for inspection and copying in response

to the request to produce because it may well be offered at trial. The signs I have used are produced for inspection and copying as well.

Request for Production No. 3. Produce copies of all documents furnished to or produced by the experts identified in Interrogatory No. 4.

There are no such documents at this time.

Request for Production No. 4. Produce copies of all documents furnished to or produced by the witnesses identified in Interrogatory No. 5.

There are no such documents at this time.

Request for Production No. 5. Produce copies of all documents in your possession, custody or control which refer to or relate to the facts and allegations set forth in the Complaint.

The documents have already been provided to counsel for defendants (attached to the Motion for Preliminary Injunction are the only such documents at this time).

Request for Production No. 6. Produce copies of all documents in your possession, custody or control which were sent to or received from individuals who are not parties to this action, but which documents refer to or relate to claims of the unconstitutionality of Section 18-9-122(3).

There are no such documents.

Request for Production No. 7. Produce copies of all correspondence between yourself and any other plaintiff which in any way relates to this matter.

There is no such correspondence.

PLAINTIFF AUDREY HIMMELMANN'S RESPONSES TO DEFENDANTS' REQUEST FOR ADMISSIONS

Comes the Plaintiff, Audrey Himmelmann, and tenders her

responses to Defendants' Request for Admissions as follows:

Request for Admission No. 1. Admit that you have never been cited, detained, arrested or referred for prosecution on a charge of violating Section 18-9-122(3), Colorado Revised Statutes.

Admitted.

Request for Admission No. 2. Admit that you have never been cited, detained, arrested or referred for prosecution on a charge of violating Section 5-3-10 of the Boulder Revised Municipal Code.

Admitted.

Request for Admission No. 3. Admit that you have never been cited, detained, arrested or referred for prosecution on a charge of violating Section 38-114 of the Denver Revised Municipal Code.

Admitted.

Request for Admission No. 4. Admit that you have engaged in and continue to engage in sidewalk counseling as defined in paragraph 18 of the Complaint within 100 feet of the entrance to health care facilities in the City of Boulder, Colorado since June 5, 1987.

Denied, with the explanation that Plaintiff Himmelmann has travelled on some occasions to Boulder to picket at abortion businesses there, and while Plaintiff Himmelmann has no specific recollection thereof, it may be that I spoke with persons who were entering those businesses to offer them counsel.

Request for Admission No. 5. Admit that you have engaged in and continue to engage in sidewalk counseling as defined in paragraph 18 of the Complaint within 100 feet of the entrance to medical or health care facilities in the city of Denver, Colorado since November 19, 1990.

Admitted.

Request for Admission No. 6. Admit that you have engaged in and continue to engage in sidewalk counseling as defined in paragraph 18 of the Complaint within 100 feet of the entrance to medical or health care facilities in Colorado since April 19, 1993.

Denied. Plaintiff Himmelmann has not done so out of fear of application of C.R.S. § 18-9-122(3) through criminal prosecution.

Request for Admission No. 7. Admit that you have engaged in leafletting within 100 feet of the entrance to a health care facility in Colorado since April 19, 1993.

Denied. Plaintiff Himmelmann has refrained from doing so out of fear of application of C.R.S. § 18-9-122(3) through criminal prosecution.

Request for Admission No. 8. Admit that you have engaged in displaying signs within 100 feet of the entrance to a health care facility in Colorado since April 19, 1993.

Admitted.

Request for Admission No. 9. Admit that you have engaged in oral protesting, educating or counseling within 100 feet of the entrance to a health care facility in Colorado since April 19, 1993.

Admitted.

Request for Admission No. 10. Admit that normal conversational tones are generally audible at eight feet from the speaker.

Denied, with qualification that such conversational tones may, or may not, be audible depending on a variety of unstated circumstances, such as the level of other noise in the vicinity, and the hearing ability of the listener.

Request for Admission No. 11. Admit that loud speech such as shouting is generally audible at eight feet from the speaker.

Denied with qualification that such shouting may, or may not, be audible depending on a variety of unstated circumstances, such as the level of other noise in the vicinity, and the hearing ability of the listener.

Request for Admission No. 12. Admit that Section 18-9-122(3) does not preclude any speech outside an eight foot radius of any listener.

Admiitted, with the qualification that the existence of the statute and the potential for enforcement through criminal prosecution, is intimidating and compels the exercise of great caution and circumspection not previously required.

Request for Admission No. 13. Admit that Section 18-9-122(3) does not preclude any leafletting or handbilling outside an eight foot radius of any recipient.

Admiitted, with the qualification that the existence of the statute and the potential for enforcement through criminal prosecution, is intimidating and compels the exercise of great caution and circumspection not previously required.

Request for Admission No. 14. Admit that Section 18-9-122(3) does not preclude any displaying any signs outside an eight foot radius of any other person.

Admiitted, with the qualification that the existence of the statute and the potential for enforcement through criminal prosecution, is intimidating and compels the exercise of great caution and circumspection not previously required.

Request for Admission No. 15. Admit that government has an interest in securing access to health care for its citizens.

Denied, with the explanation that the requested admission does not define "access" and it does not define "health care;" and with the further explanation that the government of the State of Colorado has a variety of other interests, explicitly established in the Constitutions of the United States and of

Colorado, which are directly jeopardized by the enactment and threatened enforcement of C.R.S. § 18-9-122(3).

Request for Admission No. 16. Admit that the fact that an individual is displaying a sign may be seen from eight feet away.

Admiitted, with the qualification that such a fact may or may not be observable depending on a variety of unstated circumstances, such as the visual acuity of the observer and the existence of obstructions to the line of sight of the observer.

Request for Admission No. 17. Admit that signs with sufficiently large print may be read from eight feet away.

Admitted with the qualification that there are various unstated circumstances which would affect visibility and readability of print at such distances.

Request for Admission No. 18. Admit that the fact that an individual is offering literature or a leaflet may be seen from eight feet away.

Admiitted, with the qualification that there are various unstated circumstances which would affect observability of such conduct at such distances, such as the visual acuity of the observer and the existence of obstructions to the line of sight of the observer.

Request for Admission No. 19. Admit that the attached copy is a true and accurate transcript of the hearings and debate before the Colorado General Assembly on the passage of Section 18-9-122(3).

Denied. The Plaintiff lacks the capacity to testify to the authenticity of this document.

Request for Admission No. 20. Admit that Section 18-9-122(3) does not authorize any person or entity, including government officials or entities, to prohibit or restrict leafletting, picketing, or oral protest, education or counseling,

unless that person is the target of the leafletting, picketing or oral protest, education or counseling.

Denied.

Request for Admission No. 21. Admit that Section 18-9-122(3) does not authorize any government officials or government entity to prohibit or restrict the printing or preparation of any written material.

Admiitted, with the qualification that printing and preparation of handbills is a fruitless exercise in the circumstances created by the imposition of C.R.S. § 18-9-122(3).

Request for Admission No. 22. Admit that Section 18-9-122(3) does not authorize any government officials or government entity to seize any written materials.

Denied. Seizure of evidence of the commission of a crime, to wit, distribution of literature without consent being obtained at greater than eight feet distance, is, on information and belief, a standard police practice and procedure.

Request for Admission No. 23. Admit that Section 18-9-122(3) does not authorize any person or entity, including government officials or government entities, to prohibit or restrict the distribution of written materials, unless that person is the target of the distribution of written materials.

Denied.

PLAINTIFF AUDREY HIMMELMANN'S RESPONSES TO DEFENDANTS' INTERROGATORIES

Comes the Plaintiff, Audrey Himmelmann, and tenders her answers to the interrogatories of the Defendants as follows:

Interrogatory No. 1. If you have denied any of the requests for admissions above, and if you have not already done so in

making that denial, please identify all facts relied upon by you in making the denial and identify all persons known to you who have knowledge of those facts.

See Plaintiff Himmelmann's answers to requests to admit.

Interrogatory No. 2. Please identify each and every individual or individuals answering each of the interrogatories, requests for admission and requests for production. Identify the interrogatory, request for admission or request for production to which each individual or individuals provided information utilized in the response.

Plaintiff Himmelmann and James M. Henderson, Sr.: all requests to admit, interrogatories and requests to produce documents.

Interrogatory No. 3. Please identify each and every person consulted or assisting in answering these interrogatories or requests for admissions or in gathering the documents requested below.

James M. Henderson, Sr.

Interrogatory No. 4. Please identify all experts you intend to call at the trial of this matter. Your response should include, but should not be limited to: (1) a brief summary of the experts' qualifications; (2) a summary of the experts' anticipated testimony; (3) the substance of the facts and opinions on which the experts are expected to testify; and (4) a summary of the grounds for each opinion.

Not identified at this time but to be determined and announced as soon as so identified.

Interrogatory No. 5. Please identify all witnesses you intend to call at the trial of this matter. Your response should include, but should not be limited to, a brief summary of the witness' anticipated testimony.

Leila Jeanne Hill, Audrey Himmelmann, Everitt W.

Simpson, Jr.: Each will testify as to their free speech activities in the vicinity of abortion businesses in the State of Colorado, and the impact of C.R.S. § 18-9-122(3) on those activities.

Other witnesses have not been identified at this time. If, and as soon as such witnesses are identified, this response will be supplemented.

Interrogatory No. 6. Please identify all individuals who have knowledge of the facts and circumstances at issue in this matter.

The Plaintiffs and the Defendants have such knowledge. The members of the state assembly who sponsored the bill which created C.R.S. § 18-9-122(3) have such knowledge. Pro-life and pro-abortion activists across the State, on belief, have information about the facts and circumstances of this matter.

Interrogatory No. 7. In Paragraph 34 of the Complaint, you allege that, by operation of federal law, Section 18-9-122(3) does not apply to labor activities. Please describe, in specific detail, the federal law that precludes application of Section 18-9-122(3) to labor activities.

Title 29 U.S.C. §§ 152, 153, 158, 160.

Interrogatory No. 8. In Paragraph 35 of the Complaint, you allege that, by operation of Colorado law, Section 18-9-122(3) does not apply to labor activities. Please describe, in specific detail, the Colorado law that precludes application of Section 18-9-122(3) to labor activities.

C.R.S. §§ 8-3-104 *et seq.*, the "Labor Peace Act."

Interrogatory No. 9. Please state whether you have ever carried any signs while engaging in sidewalk counseling as defined in paragraph 18 of the Complaint. If so, for each sign, state the size of the sign, the size of the lettering thereon, the size of any illustrations or pictures thereon, and the method for carrying or

displaying the sign.

In lieu of a description thereof, one of each sign so used will be produced for inspection and copying together with any documents responsive to the Requests to Produce.

Interrogatory No. 10. Please state how far or close you physically came to a listener or recipient while engaging in sidewalk counseling as defined in paragraph 18 of the Complaint before Section 18-9-122(3) became law.

On occasion, I have walked side-by-side with a person who was interested in the educational and counselling information I had to offer. Where appropriate, on other occasions, I have walked at greater distances.

Interrogatory No. 11. Please state how far or close you physically came to a listener or recipient while engaging in sidewalk counseling as defined in paragraph 18 of the Complaint since Section 18-9-122(3) became law.

Since the new law was adopted I have not approached closer than eight feet to listeners or recipients for fear of possible prosecution.

Interrogatory No. 12. Please state whether you have requested permission from any listener within 100 feet of the entrance to a health care clinic to come closer than eight feet from such person since Section 18-9-122(3) became law. If yes, for each instance, identify: (a) how you requested permission, including what you asked the listener; (b) the verbal or physical response of the listener, and (c) whether you came within a distance of eight feet or closer from that listener after the response.

I have not requested permission to approach closer than eight feet.

Interrogatory No. 13. Please identify any verbal or written comments made to you or in your presence by any member of law enforcement concerning the limitations imposed upon your

speech or activities by Section 18-9-122(3), C.R.S., Section 5-3-10 of the Boulder Revised Municipal Code, or Section 38-114 of the Denver Revised Municipal Code. For each identified comment, please state:

a. The name and job title of the person making such comment.

b. The date and time that the comment was made.

c. The place where the comment was made.

d. The names and addresses of any other person hearing or seeing the comment.

e. The circumstances existing at the time the comment was made.

f. Your reaction to the comment at the time it was made, if any.

There are no such communications.

Interrogatory No. 14. Please state specifically now, if any, your sidewalk counseling activities have altered or changed since Section 18-9-122(3) became law.

I have discontinued approaching within eight feet of listeners or recipients while I am closer than 100 feet of the entrances of abortion businesses, even though I could do so while remaining on public property. I have discontinued doing so directly as the result of fear of criminal prosecution for an alleged violation of C.R.S. § 18-9-122(3). At all times, I am compelled constantly to consider the 100 feet distance issue and the additional eight foot bubble distance, which concerns were created by the enactment of the statute.

PLAINTIFF EVERITT W. SIMPSON, JR., RESPONSES

TO DEFENDANTS' REQUESTS TO ADMIT

Comes the Plaintiff, Everitt W. Simpson, Jr., and responds to Defendants' Requests for Admissions as follows:

Request for Admission No. 1. Admit that you have never been cited, detained, arrested or referred for prosecution on a charge of violating Section 18-9-122(3), Colorado Revised Statutes.

Admitted.

Request for Admission No. 2. Admit that you have never been cited, detained, arrested or referred for prosecution on a charge of violating Section 5-3-10 of the Boulder Revised Municipal Code.

Admitted.

Request for Admission No. 3. Admit that you have never been cited, detained, arrested or referred for prosecution on a charge of violating Section 38-114 of the Denver Revised Municipal Code.

Admitted.

Request for Admission No. 4. Admit that you have engaged in and continue to engage in sidewalk counseling as defined in paragraph 18 of the Complaint within 100 feet of the entrance to health care facilities in the City of Boulder, Colorado since June 5, 1987.

Denied.

Request for Admission No. 5. Admit that you have engaged in and continue to engage in sidewalk counseling as defined in paragraph 18 of the Complaint within 100 feet of the entrance to medical or health care facilities in the city of Denver, Colorado since November 19, 1990.

Denied. Plaintiff Simpson discontinued sidewalk counseling at Denver abortion businesses earlier in 1990. On two occasions since then, once on Mothers' Day, 1991, and once in 1993, Plaintiff Simpson has been in the vicinity of a

Denver abortion business but did not engage in sidewalk counseling on those two occasions.

Request for Admission No. 6. Admit that you have engaged in and continue to engage in sidewalk counseling as defined in paragraph 18 of the Complaint within 100 feet of the entrance to medical or health care facilities in Colorado since April 19, 1993.

Denied.

Request for Admission No. 7. Admit that you have engaged in leafletting within 100 feet of the entrance to a health care facility in Colorado since April 19, 1993.

Denied. Out of concern for possible criminal prosecution, Plaintiff Simpson discontinued approaching closer than 100 feet of abortion businesses since the statute was adopted.

Request for Admission No. 8. Admit that you have engaged in displaying signs within 100 feet of the entrance to a health care facility in Colorado since April 19, 1993.

Denied. Out of concern for possible criminal prosecution, Plaintiff Simpson discontinued approaching closer than 100 feet of abortion businesses since the statute was adopted.

Request for Admission No. 9. Admit that you have engaged in oral protesting, educating or counseling within 100 feet of the entrance to a health care facility in Colorado since April 19, 1993.

Denied, with the qualification that, during the visit of the Pope to Denver, in August 1993, Plaintiff Simpson participated in an event called a Life Chain, at the Lutheran Hospital in Wheat Ridge, Colorado, which is a hospital where abortions are committed.

Request for Admission No. 10. Admit that normal conversational tones are generally audible at eight feet from the speaker.

Denied, with qualification that such conversational tones may, or may not, be audible depending on a variety of unstated circumstances, such as the level of other noise in the vicinity, and the hearing ability of the listener.

Request for Admission No. 11. Admit that loud speech such as shouting is generally audible at eight feet from the speaker.

Denied, with qualification that such shouting may, or may not, be audible depending on a variety of unstated circumstances, such as the level of other noise in the vicinity, and the hearing ability of the auditor.

Request for Admission No. 12. Admit that Section 18-9-122(3) does not preclude any speech outside an eight foot radius of any listener.

Admiitted, with the qualification that the existence of the statute and the potential for enforcement through criminal prosecution, is intimidating and compels the exercise of great caution and circumspection not previously required.

Request for Admission No. 13. Admit that Section 18-9-122(3) does not preclude any leafletting or handbilling outside an eight foot radius of any recipient.

Admiitted, with the qualification that the existence of the statute and the potential for enforcement through criminal prosecution, is intimidating and compels the exercise of great caution and circumspection not previously required.

Request for Admission No. 14. Admit that Section 18-9-122(3) does not preclude any displaying any signs outside an eight foot radius of any other person.

Admiitted, with the qualification that the existence of the statute and the potential for enforcement through criminal prosecution, is intimidating and compels the exercise of great caution and circumspection not previously required.

Request for Admission No. 15. Admit that government has an

interest in securing access to health care for its citizens.

Denied, with the explanation that the requested admission does not define "access" and it does not define "health care;" and with the further explanation that the government of the State of Colorado has a variety of other interests, explicitly established in the Constitutions of the United States and of Colorado, which are directly jeopardized by the enactment and threatened enforcement of C.R.S. § 18-9-122(3).

Request for Admission No. 16. Admit that the fact that an individual is displaying a sign may be seen from eight feet away.

Admiitted, with the qualification that such a fact may or may not be observable depending on a variety of unstated circumstances, such as the visual acuity of the observer and the existence of obstructions to the line of sight of the observer.

Request for Admission No. 17. Admit that signs with sufficiently large print may be read from eight feet away.

Admitted with the qualification that there are various unstated circumstances which would affect visibility and readability of print at such distances, such as the visual acuity of the observer and the existence of obstructions to the line of sight of the observer.

Request for Admission No. 18. Admit that the fact that an individual is offering literature or a leaflet may be seen from eight feet away.

Admiitted, with the qualification that there are various unstated circumstances which would affect observability of such conduct at such distances, such as the visual acuity of the observer and the existence of obstructions to the line of sight of the observer.

Request for Admission No. 19. Admit that the attached copy is a true and accurate transcript of the hearings and debate

before the Colorado General Assembly on the passage of Section 18-9-122(3).

Denied. The Plaintiff lacks the capacity to testify to the authenticity of this document.

Request for Admission No. 20. Admit that Section 18-9-122(3) does not authorize any person or entity, including government officials or entities, to prohibit or restrict leafletting, picketing, or oral protest, education or counseling, unless that person is the target of the leafletting, picketing or oral protest, education or counseling.

Denied.

Request for Admission No. 21. Admit that Section 18-9-122(3) does not authorize any government officials or government entity to prohibit or restrict the printing or preparation of any written material.

Admiitted, with the qualification that printing and preparation of handbills is a fruitless exercise in the circumstances created by the imposition of C.R.S. § 18-9-122(3).

Request for Admission No. 22. Admit that Section 18-9-122(3) does not authorize any government officials or government entity to seize any written materials.

Denied. Seizure of evidence of the commission of a crime, to wit, distribution of literature without consent being obtained at greater than eight feet distance, is, on information and belief, a standard police practice and procedure.

Request for Admission No. 23. Admit that Section 18-9-122(3) does not authorize any person or entity, including government officials or government entities, to prohibit or restrict the distribution of written materials, unless that person is the target of the distribution of written materials.

Denied. The statute, as written, prohibits a distributer of

materials from handing out literature within eight feet of another person without the consent of that person.

PLAINTIFF EVERITT W. SIMPSON, JR.'S ANSWERS TO INTERROGATORIES

Comes the Plaintiff, Everitt W. Simpson, Jr., and tenders his responses to Defendants' Interrogatories as follows:

Interrogatory No. 1. If you have denied any of the requests for admissions above, and if you have not already done so in making that denial, please identify all facts relied upon by you in making the denial and identify all persons known to you who have knowledge of those facts.

See Plaintiff Simpson's responses to the requests to admit.

Interrogatory No. 2. Please identify each and every individual or individuals answering each of the interrogatories, requests for admission and requests for production. Identify the interrogatory, request for admission or request for production to which each individual or individuals provided information utilized in the response.

Everitt W. Simpson, Jr. and James M. Henderson, Sr.: all requests to admit, interrogatories and requests to produce.

Interrogatory No. 3. Please identify each and every person consulted or assisting in answering these interrogatories or requests for admissions or in gathering the documents requested below.

James M. Henderson, Sr. and Leila Jeanne Hill.

Interrogatory No. 4. Please identify all experts you intend to call at the trial of this matter. Your response should include, but should not be limited to: (1) a brief summary of the experts' qualifications; (2) a summary of the experts' anticipated testimony; (3) the substance of the facts and opinions on which

the experts are expected to testify; and (4) a summary of the grounds for each opinion.

No expert witness has been identified at this time. As soon as an expert has been so identified this response will be supplemented.

Interrogatory No. 5. Please identify all witnesses you intend to call at the trial of this matter. Your response should include, but should not be limited to, a brief summary of the witness' anticipated testimony.

Leila Jeanne Hill , Audrey Himmelmann, Everitt W. Simpson, Jr.: Each will testify as to their free speech activities in the vicinity of abortion businesses in the State of Colorado, and the impact of C.R.S. § 18-9-122(3) on those activities.

Other witnesses have not been identified at this time. If, and as soon as such witnesses are identified, this response will be supplemented.

Interrogatory No. 6. Please identify all individuals who have knowledge of the facts and circumstances at issue in this matter.

The Plaintiffs and the Defendants have such knowledge. The members of the state assembly who sponsored the bill which created C.R.S. § 18-9-122(3) have such knowledge. Prolife and proabortion activists across the State, on belief, have information about the facts and circumstances of this matter.

Interrogatory No. 7. In Paragraph 34 of the Complaint, you allege that, by operation of federal law, Section 18-9-122(3) does not apply to labor activities. Please describe, in specific detail, the federal law that precludes application of Section 18-9-122(3) to labor activities.

Title 29 U.S.C. §§ 152, 153, 158, 160.

Interrogatory No. 8. In Paragraph 35 of the Complaint, you

allege that, by operation of Colorado law, Section 18-9-122(3) does not apply to labor activities. Please describe, in specific detail, the Colorado law that precludes application of Section 18-9-122(3) to labor activities.

C.R.S. §§ 8-3-104 *et seq.*, the "Labor Peace Act."

Interrogatory No. 9. Please state whether you have ever carried any signs while engaging in sidewalk counseling as defined in paragraph 18 of the Complaint. If so, for each sign, state the size of the sign, the size of the lettering thereon, the size of any illustrations or pictures thereon, and the method for carrying or displaying the sign.

Yes. In lieu of a description of these signs, those signs will be produced for inspection and copying together with documents responding to the Defendants' Requests to Produce.

Interrogatory No. 10. Please state how far or close you physically came to a listener or recipient while engaging in sidewalk counseling as defined in paragraph 18 of the Complaint before Section 18-9-122(3) became law.

Typically, two or three feet.

Interrogatory No. 11. Please state how far or close you physically came to a listener or recipient while engaging in sidewalk counseling as defined in paragraph 18 of the Complaint since Section 18-9-122(3) became law.

Since the adoption of the statute, I have discontinued going within 100 feet of entrances to abortion businesses. Outside of that 100 foot distance, I have continued to approach within two or three feet of listeners/recipients.

Interrogatory No. 12. Please state whether you have requested permission from any listener within 100 feet of the entrance to a health care clinic to come closer than eight feet from such person since Section 18-9-122(3) became law. If yes, for each instance, identify: (a) how you requested permission, including

what you asked the listener; (b) the verbal or physical response of the listener, and (c) whether you came within a distance of eight feet or closer from that listener after the response.

No.

Interrogatory No. 13. Please identify any verbal or written comments made to you or in your presence by any member of law enforcement concerning the limitations imposed upon your speech or activities by Section 18-9-122(3), C.R.S., Section 5-3-10 of the Boulder Revised Municipal Code, or Section 38-114 of the Denver Revised Municipal Code. For each identified comment, please state:

a. The name and job title of the person making such comment.

b. The date and time that the comment was made.

c. The place where the comment was made.

d. The names and addresses of any other person hearing or seeing the comment.

e. The circumstances existing at the time the comment was made.

f. Your reaction to the comment at the time it was made, if any.

I received a written comment, in the form of a letter, from the City Attorney for the City of Lakewood, Colorado. The letter was responsive to two letters I had previously sent to the City Attorney, and one that I had sent to the Mayor of Lakewood. I received the letter by mail, and the letter was dated July 2, 1993. In his letter, City Attorney Noonan declared, "The Lakewood Police Department has been advised of the provisions of this new statute and is prepared to enforce its terms," and, "violations of this new statute will be instead prosecuted by the Office of the District Attorney, First Judicial District, 1726 Cole Boulevard, Building 22, Suite 300, Golden,

Colorado, 80401."

No other comments have been made.

Interrogatory No. 14. Please state specifically now, if any, your sidewalk counseling activities have altered or changed since Section 18-9-122(3) became law.

I have discontinued approaching within 100 feet of the entrances of abortion businesses, even though I could do so while remaining on public property. I have discontinued doing so directly as the result of fear of criminal prosecution for an alleged violation of C.R.S. § 18-9-122(3). At all time, I am compelled to consider the 100 feet distance issue and the additional eight foot bubble distance, which concerns were created by the enactment of the statute.

PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT

Come now the Plaintiffs, Leila Jeanne Hill, Audrey Himmelmann, and Everitt W. Simpson, Jr., and, pursuant to Rule 56, C.R.C.P., request the Court to enter summary judgment in their favor on all claims for relief set forth in the Verified Complaint. In support of this Motion, Plaintiffs incorporate herein the attached affidavits of Leila Jeanne Hill, Audrey Himmelmann, Everitt W. Simpson, Jr., and William J. Brown, M.A., Ph.D., as well as their Brief in Support of Cross-Motion for Summary Judgment and in Opposition to the Defendants' Joint Motion for Summary Judgment, which is being filed contemporaneously with this Motion, and state further the following:

1. There are no genuine issues of material fact concerning the Verified Complaint and the facial defectiveness of C.R.S. § 18-9-122(3). Summary judgment is appropriate in these

circumstances pursuant to Rule 26 C.R.C.P., because "there is no genuine issue as to any material fact" and because the Plaintiffs are "entitled to judgment as a matter of law."

2. C.R.S. § 18-9-122(3) is facially unconstitutional, in that it is a classic prior restraint on freedom of speech and freedom of the press; and in that it operates directly to restrict and silence protected expression in traditional public forum properties near medical facilities; and in that it is a content-based restriction on oral protest, oral education and oral counseling, but lacks justification by any compelling governmental interest; and in that it is a viewpoint-based restriction on speech; and in that it is substantially overbroad; and in that it is unconstitutionally vague.

Wherefore, for the reasons set forth above and in Plaintiffs' Brief in Support of the Cross-motion for Summary Judgement, Plaintiffs respectfully pray that the court enter summary judgment in their favor, and against all Defendants on the Claims for Relief set out in the Verified Complaint.

[NOTATION

The Second Affidavit of Leila Jeanne Hill is substantially identical to the Affidavit of Leila Jeanne Hill, which is reproduced at page ___ of the Joint Appendix.]

[NOTATION

The Second Affidavit of Audrey Himmelmann is substantially identical to the Affidavit of Audrey Himmelmann, which is reproduced at page ___ of the Joint Appendix.]

[NOTATION

The Second Affidavit of Everitt W. Simpson, Jr. is substantially identical to the Affidavit of Everitt W. Simpson, Jr., which is reproduced at page ___ of the Joint Appendix.]

AFFIDAVIT OF WILLIAM J. BROWN, M.A., PH.D.

William J. Brown, M.A. Ph.D., being first duly sworn, upon his oath deposes and states as follows:

1. I am presently a Professor of Communication and Dean of the College of Communication and the Arts at Regent University, a fully accredited graduate institution in the state of Virginia. My responsibility is to oversee 17 graduate professors, a dozen adjunct faculty, and a current graduate enrollment of 240 Masters degree students and 30 doctoral students working toward M.A. and Ph.D. degrees in Communication and Journalism.

2. I received a B.S. Degree in Environmental Science from Purdue University in 1978, an M.A. in Communication Management from the Annenberg School for Communication at the University of Southern California in 1986, a second M.A. Degree in Communication from the College of Arts and Sciences at the University of Southern California in 1987, and a Ph.D. in Communication Theory and Research from the University of Southern California in 1988.

3. I am currently teaching as a Professor of Communication at Regent University in Virginia, and have taught as a full-time tenure-track faculty member at the University of Hawaii, as an Associate Professor of the University of the Nations in Hawaii, as an Adjunct Professor in the military education programs at

Pearl Harbor, Hickam Air Force Base, and Schofield Barracks on Oahu, Hawaii, as an Assistant Lecturer at the University of Southern California, and as an Adjunct Professor in a special education program at Maui Community College in Maui, Hawaii. I have lectured extensively in East Asia, and have been a guest speaker at universities in Japan, Korea, Thailand, and the Philippines.

4. In addition to my career as a communication scholar and university administrator, I have lived and worked overseas as a communication coordinator and administrator for an international non-profit organization providing refugee relief, education and training, and drug rehabilitation for refugees and the homeless in several nations in Asia, including Hong Kong, China, Thailand, the Philippines, Indonesia, Singapore, and India. As part of this work, I conducted communication seminars and taught on intercultural communication, made Hong Kong my home for five years and the Marianas Islands my home for one year, and travelled extensively throughout much of Asia.

5. Currently I am actively involved in teaching, consulting, and communication scholarship, which includes conducting original research, presenting scholarly research papers, and publishing in academic journals. My curriculum vitae is attached to this Affidavit as Appendix A.

6. In addition to my academic and administrative responsibilities, I am a communication consultant and am actively working with several large organizations to provide communication training and research.

7. My specific area of expertise is the study of how communication affects personal and social attitudes, beliefs, and behaviors, with a focus on media effects and social influence. I am currently completing a book manuscript on the

communication differences between Japanese and Americans, with a focus on nonverbal communication behaviors; and have started a second book on the international diffusion of one of the most popular animated television series for children in the history of television.

8. I have been asked to provide an expert opinion in connection with a lawsuit involving communication restrictions imposed by the State of Colorado through Colorado Revised Statute § 18-9-122(3), which restricts public communication between individuals within a physical interaction distance of eight feet.

9. The basis of my opinion is my review of over a dozen relevant communication studies, considerable input from colleagues who study interpersonal communication at other universities, my own scholarly study and education, and my own expertise and experience as a public speaker and interpersonal communicator. I have also read the Affidavits filed by the plaintiffs in support of their motion for summary judgment, and the text of the statute which is the subject of the lawsuit.

I offer the following evaluation for the court's consideration:

10. (a) There are many important variables that affect the quality of interpersonal communication between strangers. Two of the most important factors that should be considered when studying the effectiveness of interpersonal communication are immediacy and empathy. To explain immediacy, let me quote one of the most widely read communication textbooks by Joseph A. DeVito, "Immediacy refers to the joining of a speaker and listener, the creation of a sense of togetherness, of oneness. . . . Nonverbally we communicate immediacy by maintaining appropriate eye contact, a physical closeness that echoes a psychological

closeness, and a direct and open body posture" (1989, p. 106).[1] Immediacy can be simply understood as the perceived physical and psychological distance between two people.

10. (b) Perceptions of physical and psychological distance differ according to our cultural background. According to Carley Dodd, "high-immediacy behaviors in the U.S. include smiling, touching, eye contact, open body position, closer distance." Research shows that greater immediacy produces more effective and more satisfying interpersonal communication.

10. (c) Some of the most extensive research on immediacy behaviors has been conducted by Dr. Judee Burgoon of the University of Arizona (please see the citations provided in Appendix B). Dr. J. Burgoon, one of the most respected and widely read nonverbal communication scholars in the country, has shown that immediacy behaviors can significantly enhance interpersonal communication. Even when strangers interact, if the non-expected immediacy behaviors are violated in a positive way (for example, if you expect a person to be unfriendly and distant, and they approach you with respect and communicate a caring attitude and personal concern for you), the violation of expectancies can lead to positive outcomes (a satisfying conversation and increased understanding).

10. (d) With respect to the present question regarding the freedom of a person to establish high immediacy in a public place with another person they do not know, current research would predict that positive outcomes can often result from such interactions.

11. (a) A second important fact that affects interpersonal

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1. Specific text references are listed in Appendix B attached.

communication is empathy, which refers to the ability to closely associate with the feelings of another person. Empathy is also positively associated with effective communication. To explain empathy and its characteristics, let me again quote from Joseph DeVito's widely used textbook on interpersonal communication: "To empathize with someone is to feel as that person feels" (1989, p. 97).

11. (b) Like immediacy, empathy is communicated both verbally and nonverbally. DeVito states, "Nonverbally, we can communicate empathy by demonstrating (1) an active involvement with the other person through appropriate facial expressions and gestures, (2) a focused concentration including eye contact, attentive body posture, and physical closeness, and (3) appropriate touching." As empathy increases during interpersonal communication between strangers, the communication effectiveness increases and the satisfaction experienced through the interaction increases.

12. In summary, the ability for an individual to establish immediacy and empathy with another person is enhanced though close proximity within acceptable cultural and social norms in a given communication context, and is inhibited by increased distance. The ability for two strangers communicating interpersonally in a public space to create immediacy and empathy is significantly reduced at a distance of eight feet or greater as compared to four feet, which is an appropriate distance for interpersonal communication between strangers within the United States.

13. The intimate and personal nature of the interpersonal communication the plaintiffs seek to engage in with strangers cannot be effectively initiated at a distance of eight feet or greater. Eight feet may be a very appropriate distance for discussing business transactions; however, it is not an

appropriate distance for discussing one of the most emotionally difficult and life-changing decisions a person can make, such as abortion.

14. The communication context directly affects the appropriateness and necessity of communication proximity. In an enclosed room inside a building, a common environment for business transactions, clear communication can be engaged in at distances of eight feet. In an outdoor public place, interpersonal communication at distances of eight feet and greater is more difficult due to background noise and the presence of other persons in the public space. In other words, when two people are talking to each other in an outdoor pubic area, they normally are closer to each other than when in an indoor setting.

15. The intercultural communication context present in the Colorado area is an important factor when considering the appropriateness of proxemic communication behavior. Research by E. T. Hall (1966, 1983), one of the most widely cited scholars on cultural differences in nonverbal communication behaviors, as well as a number of other communication researchers, has demonstrated that Hispanic Americans communicate at closer distances than do Anglo Americans. Because of the high Hispanic American population in the southwestern United States, setting any kind of arbitrary standard regarding the distance at which a stranger invades a person's sense of personal space to the point that it is considered as harassment is nonsupportable.

16. Research shows that when people are experiencing stress they more accurately decode kinesic (movement) expressions than they do vocal expressions. Thus it is difficult to effectively communicate with a person experiencing stress if one is forced to speak loudly and maintain a distance of eight

feet or greater. The increase in volume is more likely to increase stress and agitation, not reduce it.

17. Finally, the common sense of anyone who has ever engaged in an interpersonal conversation about an intimate topic supports the above opinions. Much of our communication research simply verifies what our own experience tells us, that communicating with another person about an intimate topic in closer proximity (four feet or less in our culture), with a softer voice, with direct eye contact, and with the use of appropriate gestures, is much more effective than communicating at a distance of eight feet or greater in a public place in which we would have to speak more loudly, and our nonverbal communication such as facial expressions, eye contact, and immediacy gestures would be less effective.

REPORT OF EXPERT OPINION OF PLAINTIFFS' EXPERT WITNESS, WILLIAM J. BROWN, M.A., Ph.D.

I, William J. Brown, M.A., Ph.D., submit the following report with attachments for the consideration of the Court in the matter entitled *Leila Jeanne Hill, and others, v. David Thomas, and others*, No. 93 CV 1984, Div. 2 (Jefferson County District Court). Attached hereto in Addendum 1 is a current copy of my academic vita. Attached hereto in Addendum 2 is a list of the materials in the field consulted or relied upon in the preparation of this report and my opinion.

Many variables affect interpersonal communication between strangers. Two important factors are immediacy and empathy. Immediacy can be simply understood as the perceived physical and psychological distance between two people. Empathy refers to the ability to closely associate with the feelings of

another person.

Immediacy.

Perceptions of physical and psychological distance differ according to our cultural background. Research shows that greater immediacy produces more effective and more satisfying interpersonal communication. Immediacy behaviors can significantly enhance interpersonal communication. With respect to the present question regarding the freedom of a person to establish high immediacy in a public place with another person they do not know, current research would predict that positive outcomes can often result from such interactions.

Empathy.

Empathy is also positively associated with effective communication. Like immediacy, empathy is communicated both verbally and nonverbally. Empathy is communicated by demonstrating active interest in with others through facial expressions and gestures, focused concentration (eye contact, body posture, physical closeness, and appropriate contact). As empathy increases during interpersonal communication between strangers, the communication effectiveness increases and the satisfaction experienced through the interaction increases.

The Impact On Immediacy and Empathy of Proximity Restrictions.

The ability for an individual to establish immediacy and empathy with another person is enhanced though close proximity within acceptable cultural and social norms in a given communication context, and is inhibited by increased distance. The ability for two strangers communicating interpersonally in a public space to create immediacy and empathy is significantly reduced at a distance of eight feet or

greater as compared to four feet, which is an appropriate distance for interpersonal communication between strangers within the United States. Intimate and personal communication with strangers cannot be effectively initiated at a distance of eight feet or greater. Eight feet may be a very appropriate distance for discussing business transactions. Eight feet is is not an appropriate distance for discussing emotionally difficult and life-changing decisions.

The communication context directly affects the appropriateness and necessity of communication proximity. In an enclosed room inside a building, a common environment for business transactions, clear communication can be engaged in at distances of eight feet. In an outdoor public place, interpersonal communication at distances of eight feet and greater is more difficult due to background noise and the presence of other persons in the public space. In other words, when two people are talking to each other in an outdoor pubic area, they normally are closer to each other than when in an indoor setting.

Intercultural Considerations For Communication

The intercultural communication context present in the Colorado area is an important factor when considering the appropriateness of proxemic communication behavior. Research has demonstrated that Hispanic Americans communicate at closer distances than do Anglo Americans. Because of the high Hispanic American population in the southwestern United States, setting any kind of arbitrary standard regarding the distance at which a stranger invades a person's sense of personal space to the point that it is considered as harassment is nonsupportable.

Stress Implications of Proximity Requirements

Research shows that when people are experiencing stress

they more accurately decode kinesic expressions than they do vocal expressions. Thus it is difficult to effectively communicate with a person experiencing stress if one is forced to speak loudly and maintain a distance of eight feet or greater. The increase in volume is more likely to increase stress and agitation, not reduce it.

Final Considerations

Finally, anyone who has ever engaged in an interpersonal conversation about an intimate topic recognizes the sensibility of the above opinions. Much communication research simply verifies what personal experience already has taught, that communicating with another person about an intimate topic in closer proximity (four feet or less in our culture), with a softer voice, with direct eye contact, and with the use of appropriate gestures, is much more effective than communicating at a distance of eight feet or greater in a public place in which we would have to speak more loudly, and our nonverbal communication such as facial expressions, eye contact, and immediacy gestures would be less effective.

EXPERT REPORT OF
WARREN M. HERN, M.D., M.P.H., Ph.D
March 30, 1994
Hill v. Thomas
Civil Action No. 93 CV 1984 - Div 2
State of Colorado, County of Jefferson

I. Professional Qualifications and Experience

See attached Curriculum Vitae.[1]

II. Summary of Opinions

1. I specialize in two areas of medicine: outpatient abortion practice and epidemiology.

2. I maintain a private practice in outpatient abortion at the Boulder Abortion Clinic, 1130 Alpine, Boulder, Colorado. I have been involved in providing abortion services to patients in Boulder, Colorado since 1973.

3. My patients and I have been targets of picketing and demonstrations since 1973, and my present clinic has been the target of picketing and demonstrations since it opened in 1975. The demonstrations became more aggressive in 1985.

4. My clinical staff and I have had the opportunity in the 20 years of my practice in Boulder, Colorado, to observe the impact of anti-abortion demonstrations on the psychological and physiological health of my patients. My staff and I have had the opportunity objectively to observe patients who enter my clinic both when anti-abortion protesters are present outside my clinic and when protesters are not present. Based upon

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1. The attached Curriculum Vitae, Exhibit A, was attested to as a true and correct copy in the affidavit of Dr. Hern executed by Dr. Hern on March 4, 1994, and subsequently filed in this action.

years of observation, it is my opinion that anti-abortion protests outside my clinic have a profound negative effect on the psychological and physiological health of my patients.

5. I have observed that patients experience considerably more stress when demonstrators are present, and that my patients' psychological and physiological symptoms of stress corresponded to the aggressiveness of the demonstrators. As explained in my paper, "Proxemics: The Application of Theory to Conflict Arising from Antiabortion Demonstrations," attached as Exhibit B, social science research has shown that approaches by strangers closer than approximately three yards are stressful and are interpreted as a threat.

6. I have personally observed a number of physiological symptoms in patients after they were exposed to aggressive demonstrating. When protesters are present, patients often come in to my office shaking, tearful, and in great distress from harassment and insults, because the demonstrators approached them very closely. Clinic staff would have to calm them down for some time, which often delayed their medical care.

7. Patients experienced a "fight-or-flight" reaction, especially when demonstrators approached closely. Patients exhibited evidence of this reaction, such as pallor, shaking, sweating, pupillary dilation, palpitations, hyperventilation, and urinary retention. These reactions increased the difficulty and risk of administering medical treatment to the patients.

8. Urinary retention made it difficult to perform a pelvic examination and accurately determine the size and condition of the patient's uterus, which is essential to safe completion of a surgical abortion.

9. Hyperventilation can lead to agitation and muscle spasms, making it more difficult for patients-to remain still during medical treatment, thus increasing the risks of

complications such as perforation of the uterus during the performance of an abortion.

10. In extreme cases, hyperventilation can lead to loss of consciousness, which is dangerous in and of itself, and which also increases the risk of complications during a surgical procedure such as an abortion.

11. Since 1987, section 5-3-10 of the Boulder Revised Municipal Code has required that demonstrators outside health care facilities must remain at least eight feet away from the person who is the target of their demonstrations, unless that person gives express oral consent for a closer approach.

12. Since passage of the Boulder ordinance, demonstrators have continued to appear outside my clinic. The demonstrators can still be easily seen and heard, and patients still experience some level of stress from their presence. However, because the ordinance prevents the demonstrators from approaching my patients too closely, the patients are able to obtain medical treatment without being subjected to the most aggressive and intrusive form of demonstrating.

13. Based upon the observations of myself and my staff, it is clear that because the patients are shielded by the Boulder ordinance from close physical confrontation, their stress levels are decreased and the medical risks posed by the presence of the demonstrators are also decreased.

14. Anti-abortion demonstrators consciously, openly and actively create an atmosphere of violence and confrontation through harsh rhetoric, shocking graphic displays and aggressive behavior.

15. This behavior and rhetoric gives psychological permission to aggressive persons to make verbal and physical assaults on women and clinic workers, especially physicians.

16. The psychophysiological reactions experienced by

women seeking services are reflections of real and appropriate fear of physical harm and result in serious additional risks for women about to have surgery.

17. The mere presence of anti-abortion demonstrators within earshot or visual distance is enough to provoke negative psychological and physiological reactions in patients, even when the protesters are across the street. However, based upon the observations of myself and my staff, when the demonstrators are close to the patients, as when they are blocking the sidewalk for patients, the severity of these reactions increases manyfold.

18. In my opinion, the actions of the demonstrators cannot be construed merely as an expression of free speech, because their very intrusive behavior physically and psychologically interferes with the patients' right to have a legal medical procedure performed on them in a proper clinical atmosphere which is as free from stress as possible. This is most graphically illustrated by violent actions which have taken one life and gravely injured numerous other individuals, especially physicians. In my opinion, there is no legitimate justification for permitting the active harassment of patients. Reasonable restrictions on the exercise of free speech and what some misconstrue as free speech are wholly appropriate to protect women who seek legal abortions. These actions constitute inappropriate, abusive, and unwelcome behavior that interferes with the constitutionally protected rights of others and may not be interpreted solely as "speech." Rather, these actions threaten the health of women as they seek medical attention.

III. Basis for Opinions Expressed

In November 1973, I was responsible for opening Colorado's first free-standing, non-profit abortion clinic, Boulder Valley Clinic, at 2346 Broadway in Boulder. I had been asked to help

organize and found this clinic by some interested Boulder citizens. I was appointed Medical Director, and I set up the clinic. I was the sole physician and performed all the abortions. At that time, vigorous opposition to the clinic's existence developed in Boulder. Many of the attacks were directed toward me, and I began receiving constant death threats. At the same time, patients arriving at the clinic were harassed by anti-abortion demonstrators. The women who came as patients were already tense and fearful as the era of illegal "back-alley" abortions had just passed, and some of the patients had experienced abortions previously under the most dangerous and sordid circumstances. These latter patients were the most apprehensive and displayed the most psychophysiologic symptoms.

Based on my objective observations of the physical and psychological condition of the Boulder Valley Clinic's patients, it was clear that the activities of the anti-abortion demonstrators measurably increased the stress experienced by the patients. This stress was demonstrated by increased anxiety when protesters were active. The patient anxiety was manifested by physiologic symptoms such as: (1) increased pulse rate; (2) hyperventilation (rapid breathing); and (3) greater vasomotor liability (fainting) in the operating room setting. The demonstrations clearly heightened the already serious stress experienced by the patients, who, based upon my discussions with them, were already having to make a painful and difficult life decision, sometimes without social or emotional support. The patients' already present fear of surgery, anxiety about the social stigma of abortion, and guilt carried from conservative religious traditions was greatly compounded by the actions of the protestors, and manifested itself in psychological and psychological symptoms.

At the end of 1974, I left Boulder Valley Clinic. On January 22, 1975, I opened my own private medical practice specializing in abortion services. The harassment from antiabortion protestors continued at the new practice. There were no demonstrations affecting the patients for a period of time because the entrance to my office was at the rear of the medical office building in which it was located.

In 1978, I took over the top floor of my building when the previous owners moved to a new building across the driveway. As a result of this change in my office space, my patients entered my office through the front door facing Alpine Street in Boulder, Colorado. The demonstrations outside the clinic then markedly increased, becoming a weekly, and then daily, occurrence.

The patients routinely expressed anger, fear, and other kinds of distress that they experienced as the result of having to walk through a phalanx of demonstrators. As with the patients at the Boulder Valley Clinic, my private practice patients often exhibited physiologic signs of stress such as. (1) increased pulse rate; (2) increased blood pressure; (3) hyperventilation; (4) crying; (5) vasomotor lability (fainting); and (6) diaphoresis (sweating). According to their individual accounts, which they communicated to myself and my staff, the stress that they experienced was due much more to the presence of demonstrators than to the experience of seeking an abortion.

In 1985, a significant increase in the level of harassment occurred when the Colorado Right To Life Committee declared a state-wide objective of closing my clinic, a plan they called "Operation Jericho." The declaration of this objective was accompanied by the sudden appearance, on several occasions, by hundreds of anti-abortion demonstrators in the street in front of my clinic. As the demonstrations increased in

intensity, my patients showed objective signs of greater stress manifested by the symptoms described above.

In the fall of 1985, my clinic was set upon by Joseph Scheidler, a former priest from Chicago. Scheidler operates the "Chicago Pro-Life Action Network" and is the author of a book titled Closed: 99 Ways to Close an Abortion Clinic. Scheidler describes (and practices) such tactics as using a bullhorn to scream obscene epithets at entering patients. Scheidler's arrival in Boulder on October 21, 1985, was given wide publicity. Three days before to arrived, a stone came crashing through the front window of the waiting room in my clinic. Fortunately, no patients were there at the time, but the building was occupied. During the following week, Scheidler conducted daily demonstrations with as many as 50 to 100 demonstrators, effectively blocking the public sidewalks around my office. It was extremely difficult and frightening for the patients to enter my office, not just to have abortions, but also to obtain follow-up examinations and prescriptions for birth control, routine medical care of other kinds, emergency treatment for complications, and routine annual physical examinations.

During the period from 1985 or 1986 through 1990, anti-abortion demonstrators frequently surrounded my clinic on all sides, assembling at 6:00 A.M. to sing and shout at me as I attempted to rest in my on-call quarters at the rear of the building. In March of 1988, five shots were fired through the front windows of my office by someone using a high-powered rifle. I then installed four layers of bullet-proof glass and Lexan in the front of the building and in strategic side windows. This protection has now been extended.

From 1985 or 1986 through 1988, anti-abortion demonstrators often came into the back parking lot of my clinic in order to harass patients and approach them personally This

was accompanied by ostentatiously obvious efforts to photograph patients and their families as they entered and left my office.

On one occasion, an extremely young adolescent girl who was accompanied by her mother, came through an especially hostile and abusive group of demonstrators on my front sidewalk. She was so emotionally traumatized that she sank into what is best described as a clinically catatonic state in the clinic's front waiting room. She withdrew into the corner and would not respond to any verbal stimuli. It took a great deal of effort on the part of both my staff and the patient's mother to enable her to participate in her own medical care. The severity of this patient's reaction was uncommon, but many patients have manifested similar, if less severe, symptoms of withdrawal.

On many occasions, I have personally comforted women who entered my office crying, shaking, distraught and physiologically disturbed, in the ways described in this report, as the result of the anti-abortion demonstrations. According to my own and my staff's personal conversations with these women, they had faced a difficult decision, but were calm and resolved until they faced the obloquy of the anti-abortion fanatics on the front sidewalk of my clinic.

On several occasions, we have started the working day with my clinic surrounded by over 100 armed peace officers from all forces in Boulder County to protect us from the anti-abortion group Operation Rescue. In my considered opinion, many anti-abortion demonstrators are not peaceful, and reasonable restrictions on their behavior, such as the ordinance in Boulder, has greatly improved the psychological and physiological health, of my patients

IV. Chronology of Observations

Since 1973, I have observed abortion patients under a wide variety of changing circumstances, some already described, that fall into the following general pattern:

1. Immediately following the opening of Boulder Valley Clinic, anti-abortion demonstrators were present and harassed patients entering the front door. The demonstrators were peaceful and generally quiet, but their presence caused moderate to severe stress for some patients. Following the arrangement of patient parking in the rear of the building and advice to patients to enter the clinic grounds through the rear parking lot, thus avoiding the picketers, it was apparent that patients experienced less stress as the result of avoiding this confrontation. They used the same front entrance but did not have to go through the demonstrators. Eventually, the demonstrations became more sporadic. While some patients showed evidence of anxiety, especially those who had negative previous experiences with illegal abortion, the vast majority of patients were calm, focused on their decision, and able to concentrate on the sufficiently difficult experience of the abortion procedure. These patients displayed few to none of the symptoms displayed by those who had to pass through the demonstrators.

2. When I first started my own practice in 1975, my patients did not encounter demonstrators, and this did not occur to any significant degree until 1978. When the demonstrations began, I immediately observed serious psychophysiologic symptoms in patients who were being verbally abused by anti-abortion demonstrators and as the result of the mere presence of the demonstrators. We found that most of the individual counseling time which we had routinely scheduled for each patient was occupied with helping the patients cope with the stress of encountering anti-abortion demonstrators. My

experienced staff and I observed many extreme reactions in patients as the result of anti-abortion demonstrators over the years, and we became convinced that the demonstrations added very considerable stress and risk to the abortion experience for these women.

3. Following the successful defense of a court challenge to the Boulder Buffer Zone Ordinance in 1987, we found that law-enforcement authorities were able to discourage the most aggressive anti-abortion harassment of patients in front of my clinic, and this helped the patients a great deal. We saw a decrease in the severity and frequency of the most significant psychophysiologic symptoms that had been experienced by patients subjected to severe harassment. This was not solely the effect of the minimum 8-foot limit but also the strong message from the community that there was a limit which anti-abortion demonstrators could not cross. As the result of this strong community message, most demonstrations ceased or were often kept to more reasonable distances.

4. Several years after passage of the Boulder Buffer Zone ordinance, in 1989 and 1990, Operation Rescue came to my clinic on at least two occasions. On one of these occasions, Operation Rescues's national leader, Randall Terry, prayed for my death in the street in front of my clinic in October, 1990. This large demonstration was very frightening to patients. We had to pick up some patients at distant points and bring them to my office in an unmarked van under police protection. These patients displayed many symptoms of stress of the kind described previously.

5. During the past two years or so, we have had few anti-abortion demonstrations at my office, and we note a marked and dramatic reduction in the number and severity of psychophysiologic symptoms experienced by the patients

which are unrelated to the surgical procedure itself: symptoms that people have are specifically related to fear of surgery, fear of needles, fear of pain, and other appropriate anxieties. These reactions are far more manageable from a medical point of view because they do not involve fear of abuse and attack by strangers as punishment for having made an extremely private and painful decision. Each patient is more likely to recognize the attention she is getting is about her safety and welfare and it comes to her from people who support her decision.

V. Summary

Anti-abortion demonstrators are free to assemble and speak as are others. But their mere presence at a clinic where women receive this extremely sensitive and private medical care is disruptive, inappropriate and dangerous to the health of the women seeking the care. In my opinion, the issues presented in this case concern the behavior of the anti-abortion demonstrators, not simply their exercise of free speech.

As stated in my 1991 paper entitled, "Proxemics: Application of Anthropological Theory in Anti-Abortion Demonstrations," Population and Environment; the demonstrators are clearly violating fundamental cultural conventions concerning the appropriate use of space. Patients approaching my clinic are anticipating doing so in a private manner as they would any medical office for any medical treatment. Demonstrators then subject the patients to unwelcome and inappropriate normative messages in close personal proximity designed to make the patients extremely uncomfortable. As shown by my patients' physiological and psychological reactions to the demonstrations, the demonstrators largely succeed in creating extreme physical and psychological reactions in my patients.

The violation of these very profound cultural conventions

governing the appropriate use of space has the effect of producing extreme anxiety and even panic in those experiencing it. In my opinion, the actions of the demonstrators amount to psychological rape. Violation of these deeply ingrained conventions, which are quite subtle and not consciously perceived by most people, are experienced as physical assault, and they produce the same psychophysiologic reactions as physical assault.

As a result of the actions of anti-abortion demonstrators, abortion patients suffer fear, stress, increased physiologic instability and discomfort, increased risk of certain kinds of preventable complications and searing guilt that they will carry all their lives.

In my opinion, the minimum distance at which antiabortion demonstrators should be kept is similar to the resolution produced by the constitutional conflict concerning political activity near polling places: it should be at least 100 feet. In my opinion, the safety and health of women who choose to exercise their constitutional right to seek abortion is comparable to the right to vote without coercion or duress.

AFFIDAVIT OF MARIANNE LAFRANCE, M.A., Ph.D.

Marianne LaFrance, M.A. Ph.D. states as follows:

1. I am presently Professor of Psychology at Boston College, a fully accredited graduate institution in the state of Massachusetts. My responsibilities include teaching and advising graduate and undergraduate courses in social psychology and nonverbal communication, acting as doctoral dissertation advisor in the Department of Psychology as well as in the School of Education and the School of Nursing, and conducting research.

2. I received a B.A. Hons. Degree in Psychology from the University of Windsor, Windsor, Ontario, Canada in 1969, an M.A. degree in Social Psychology from Boston University in 1971 and a Ph.D degree in Social Psychology from Boston University in 1974.

3. I was promoted to my present position as full Professor at Boston College in 1990 having been before that Assistant Professor from 1974-1980 and Associate Professor from 1980-1990. In addition, I have held appointments as Mellon Scholar at Radcliffe College, Harvard University in Cambridge, Massachusetts, as Visiting Scholar at the University of California at San Francisco, and as Visiting Research Professor at Yale University in New Haven, Connecticut.

4. Along with my activities as a Social Psychologist and Nonverbal Communication Researcher, I have served on a number of editorial boards that publish research in this area including the Journal of Nonverbal Behavior, the Journal of Communication, and Human Communication Research and have been a panel member on research review committees at the National Institute of Mental Health and the National Science Foundation. I have also consulted on matters of communication to several public institutions, have devised a number of training programs in nonverbal communication skills for large organizations and have lectured nationally and internationally in this domain.

5. Currently, I am actively involved in teaching, consulting, and scholarship having just received a three-year research grant from the National Science Foundation to study nonverbal cues associated with nonverbal messages of affiliation and dominance.

6. My specific area of expertise is the study of nonverbal communication which is the systematic examination of how

people respond to and influence each other via cues in their social environment such as interpersonal space, facial expression, gesture, vocal intonation and touch. I have co-authored a book on this topic, have been the principal investigator on a number of research grants in this area from the National Institute of Mental Health and the National Science Foundation, and have published extensively on nonverbal communication in peer reviewed journals.

7. I have been asked to provide an expert opinion in connection with the Colorado "Bubblezone" law, Colorado Revised Statute § 18-9-122 C.R.S., which specifies that no person shall knowingly approach another person within a physical interaction distance of eight feet without their consent at a health care facility for purposes of communication.

8. The basis of my opinion is my own published research in this area (cf. Polit and LaFrance,1977; LaFrance and Mayo,1978), my published and unpublished reviews of the literature presented by others in this area (cf. LaFrance & Mayo,1979), my teaching in this area for 20 years; my consultation with colleagues who conduct research on proxemics, and my expertise as a consultant and trainer in this domain. I have also read the affidavits filed by the Plaintiffs and the text of the statute which is the subject of this lawsuit.

I offer the following description and assessment of the facts on the approximately 40 year old field of *Proxemics* for the court's consideration.

9. (a) Personal space may be defined as the invisible, portable, adjustable bubble that individuals maintain around themselves, that is actively maintained particularly around strangers, to protect the person from physical and emotional threats. (Katz,1937; Sommer,1969).

9. (b) Personal space is indispensable to human functioning

in three ways: (i) Personal space functions as a mechanism to sustain *privacy*; (Goffman) (ii) Personal space acts as a buffer against physical or psychological threat; (Sommer and (iii) Personal space is a way for people to deal adaptively with *overload* (Milgram,).

9. (c) Personal space between people increases as the relationship between them becomes less familiar. For example, the anthropologist Edward T. Hall has arrived at the following classification of normative interpersonal distances for people in the United States: *intimate relationships* involving family and loved ones (18 inches and less); *personal relationships* involving friends and co-workers (one and a half to four feet); *social-consultative* relationships involving transactions among strangers or impersonal business (four to twelve feet); and *public relationships* twelve feet and over).

10. (a) With respect to the question as to what happens when a person's personal space is invaded, research consistently shows that inappropriate close distances are noxious and stressful.

10. (b) Personal space invasion is said to occur when an encroacher violates the norms of interpersonal distance by approaching too closely where the subject does not expect or desire to interact with the potential invader (Sommer, 1966).

10. (c) Personal space invasion has been shown to be stressful as measured in a variety of ways.

10. (d) Personal space invasion has been shown to result in significant increases in *physiological arousal* (e.g., Aiello et al 1977; Janik et al, 1983: Middlemist et al 1976).

10. (e) Personal space invasion reliably produces reactions of *avoidance and withdrawal* (Baum et al,1975; Davis & Lennon 1983; Polit and LaFrance, 1977).

10. (f) Personal space invasion results in people showing

active signs of *subjective discomfort* such as defensive movements and speech disruptions (Rozelle & Baxter,1978) or hostility (Milgram,1970).

10. (g) Personal space invasion *decreases cognitive performance*, that is people think less well when someone has violated norms for appropriate interpersonal space (Worchel et al 1976; 1979).

11. (a) With respect to whether requiring people to maintain a distance of eight feet, from users of health care facilities *interferes* with or restricts the ability to communicate with those people, research actually shows that communication may be *enhanced* at moderate (6-10 feet) rather than at close distances (1-4 feet).

11. (b) People are more willing to talk about personal issues when they were seated at moderate distances (5 feet) than when there were seated either at close distances (2 feet) or far distances (10 feet). (Stone & Morden,1976). Health care issues are clearly personal issues.

11. (c) When people are exposed to someone delivering a persuasive message at one of three interpersonal distances (two feet, six feet, fifteen feet), the optimal distance for changing someone's attitude was fifteen feet. At closer distances, the participants seemed distracted by the presence of the persuader because they felt unduly pressured (Albert & Dabbs, 1970).

11. (d) People are more likely to comply with an influence attempt by a member of another group if the request is made at farther rather than close distances (Coutts & Ledden,1977; Glick et al,1988).

12. (a) With regard to whether personal space varies between individuals and groups, the findings show a number of contextual effects. Although various factors have been shown to effect personal space, the conclusion that "setting any kind

of arbitrary standard regarding the distance at which a stranger invades a person's sense of personal space to the point that is considered as harassment is non supportable" (Brown affidavit # 15) is itself non supportable. That conclusion is based on the following.

12. (b) In all cultural groups studied, strangers maintain farther interpersonal distances than do friends or acquaintances (Mehrabian,1969).

12. (c) Across several different groups, people chose greater distances when interacting with persons perceived to be unfriendly (Kleck,1969) or to be showing emotional behavior (Mrinal et al 1989). Moreover research shows that one of the most significant factors for generating anger in other people are situations in which self-opinionated people are present, e.g., those who know best, those who do not take other's views seriously (Torestad,1990).

12. (d) While there is some indication that Hispanics interact at closer distances than do Anglos or Blacks these cultural distances tend to be maintained only if *all* parties to an interaction share the same cultural background (Knapp & Hall,1992).

13. (a) There is research support for Statute 18-9-122's stipulation that "no person shall knowingly approach another person within eight feet of such person, unless such other person consents". Specifically, findings show that maintaining a distance from strangers affords some degree of defense (Dosey & Miesels,1969) and that being in control of interpersonal distances and perceiving that one has that control, may be necessary for principles of personal space regulation to be manifested in a given situation (Edney, Walker, & Jordan,1976). Having the freedom to move away or requiring the other person to move away may be crucial for that control

(Barnard & Bell,1982).

14. (a) In situations considered to be potentially threatening, people react by requiring greater personal space (Albas & Albas,1989).

14. (b) Research indicates that implied physical threat and implicit threat in the form of conflicting viewpoints are among the most likely social releasers of the need for greater personal space (Bailey, Hartnett and Gibson, 1972).

14. (c) Research shows that people tend to adopt greater than usual personal space from pregnant women (Davis & Lennon,1983)

15. Finally, the experience of anyone who has ever experienced public life supports the above opinions. There is a social rule that governs most situations involving strangers congregating in public places. The rule is that given a choice, one should take the position farthest away from the others who are present. When people elect to behave differently, that is to move close to a stranger when there is space available, the norm is violated. Moreover, when people use health care facilities, they are most likely to experience greater need for personal space due to the combined needs for privacy, safety, and overload.

RESPONSE OF GALE A. NORTON,
ATTORNEY GENERAL OF COLORADO,
TO PLAINTIFF'S FIRST SET
OF DISCOVERY REQUESTS

Defendant Gale A. Norton responds to Plaintiff's requests for discovery as follows:

RESPONSES TO REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1. Admit that publicly

owned side-walks within 100 feet of the entrance to a health care facility are traditional public forums under the Public Forum Doctrine announced by the United States Supreme Court.

RESPONSE NO. 1. Admitted, as to all such sidewalks of which Defendant is aware.

REQUEST FOR ADMISSION NO. 2. Admit that the display of signs and posters is a well-recognized form of expression protected by the Constitutions of the United States and of Colorado.

RESPONSE NO. 2. Admitted in part. Display of signs and posters is constitutionally protected, but is not exempt from reasonable time, place and manner regulations. See Heffron v. ISKCON, 452 U.S. 640, 647 (1981).

REQUEST FOR ADMISSION NO. 3. Admit that the distribution of free written materials, including pamphlets and handbills, is a well-recognized form of expression protection by the Constitutions of the United States and of Colorado.

RESPONSE NO. 3. Admitted in part. Distribution of free written materials is constitutionally protected, but is not exempt from reasonable time, place and manner regulations. See Heffron v. ISKCON, 452 U.S. 640, 647 (1981).

REQUEST FOR ADMISSION NO. 4. Admit that oral expression, including spoken messages with educational, protest, or counselling content, are well-recognized forms of expression protected by the Constitution of the United States and of Colorado.

RESPONSE NO. 4. Admitted in part. Oral expression is constitutionally protected, but is not exempt from reasonable time, place and manner regulations. See Heffron v. ISKCON, 452 U.S. 640, 647 (1981).

REQUEST FOR ADMISSION NO. 5. Admit that Section 18-

9-122(3), Colorado Revised Statutes, which makes it a class three misdemeanor for a person to display a sign to another person without the consent of such person before the display occurs, if such conduct is committed while within 100 feet of the entrance to a health care facility and while closer than 8 feet to another person, is applicable to the display of a sign containing the text of the First Amendment to the United States Constitution to another person.

RESPONSE NO. 5. Denied. Section 18-9-122(3) prohibits only those who "knowingly approach another person within eight feet of such person ... for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education or counseling with such other person in the public way or sidewalk area within a radius of one hundred feet from any entrance door" to any "entity that is licensed, certified, or otherwise authorized or permitted by law to administer medical treatment" in the state of Colorado, without the consent of "such other person." Not all the elements of the offense appear to be present in the given fact situation. However, the content of any sign displayed is irrelevant to the application of the statute.

REQUEST FOR ADMISSION NO. 6. Admit that Section 18-9-122(3), Colorado Revised Statutes, which makes it a class three misdemeanor for a person to pass a pamphlet or handbill to another person with the consent of such person before the pass occurs, if such conduct is committed while within 100 feet of the entrance to a health care facility and while closer than 8 feet to another person, is applicable to the passing of a copy of the pamphlet containing excerpts from "The Confessions," by Augustine of Hippo.

RESPONSE NO. 6. Denied. Section 18-9-122(3) prohibits only those who "knowingly approach another person within

eight feet of such person ... for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education or counseling with such other flaying person in the public way or sidewalk area within a radius of one hundred feet from any entrance door" to any "entity that is licensed, certified, or otherwise authorized or permitted by law to administer medical treatment" in the state of Colorado, without the consent of "such other person." Not all the elements of the offense appear to be present in the given fact situation. However, the content of any pamphlet passed is irrelevant to the application of the statute.

REQUEST FOR ADMISSION NO. 7. Admit that Section 18-9-122(3), Colorado Revised Statutes, makes it a class three misdemeanor for a person to orally communicate opposition to, or support for, an issue of concern to the speaker to another person without the consent of such person before the communication occurs, if such conduct is committed while within 100 feet of the entrance to a health care facility and while closer than 8 feet to another person.

RESPONSE NO. 7. Denied. Section 18-9-122(3) prohibits only those who "knowingly approach another person within eight feet of such person ... for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education or counseling with such other person in the public way or sidewalk area within a radius of one hundred feet from any entrance door" to any "entity that is licensed, certified, or otherwise authorized or permitted by law to administer medical treatment" in the state of Colorado, without the consent of "such other person." Not all the elements of the offense appear to be present in the given fact situation. However, the content of oral communication is irrelevant to the application of the statute.

REQUEST FOR ADMISSION NO. 8. Admit that Section 18-9-122(3), Colorado Revised Statutes, makes it a class 3 misdemeanor for a person to orally state, "Abortion is bad for our country and it is bad for you," to another person without the consent of such person if such conduct is committed while within 100 feet of the entrance to a health care facility and while closer than 8 feet to such other person.

RESPONSE NO. 8. Denied. Section 18-9-122(3) prohibits only those who"knowingly approach another person within eight feet of such person ... for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education or counseling with such other person in the public way or sidewalk area within a radius of one hundred feet from any entrance door" to any "entity that is licensed, certified, or otherwise authorized or permitted by law to administer medical treatment" in the state of Colorado, without the consent of "such other person." Not all the elements of the offense appear to be present in the given fact situation. However, the content of oral communication is irrelevant to the application of the statute.

REQUEST FOR ADMISSION NO. 9. Admit that Section 18-9-22(3), Colorado Revised Statutes, makes it a class three misdemeanor for a person to orally state, "I oppose the bond referendum to construct an addition onto our community hospital," to another person without the consent of such person if such conduct is committed while within 100 feet of the entrance to a health care facility and while closer than 8 feet to such other person.

RESPONSE NO. 9. Denied. Section 18-9-122(3) prohibits only those who "knowingly approach another person within eight feet of such person. . for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest,

education or counseling with such other person in the public way or sidewalk area within a radius of one hundred feet from any entrance door" to any "entity that is licensed, certified, or otherwise authorized or permitted by law to administer medical treatment" in the state of Colorado, without the consent of "such other person." Not all the elements of the offense appear to be present in the given fact situation. However, the content of oral communication is irrelevant to the application of the statute.

REQUEST FOR ADMISSION NO. 10. Admit that Section 18-9-122(3), Colorado Revised Statutes, makes it a class three misdemeanor for a person to orally communicate educational information to another person without the consent of such person before the communication occurs, if such conduct is committed while within 100 feet of the entrance to a health care facility and while closer than 8 feet to another person.

RESPONSE NO. 10. Denied. Section 18-9-122(3) prohibits only those who "knowingly approach another person within eight feet of such person . . . for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education or counseling with such other person in the public way or sidewalk area within a radius of one hundred feet from any entrance door" to any "entity that is licensed, certified, or otherwise authorized or permitted by law to administer medical treatment" in the state of Colorado, without the consent of "such other person." Not all the elements of the offense appear to be present in the given fact situation. However, the content of oral communication is irrelevant to the application of the statute.

REQUEST FOR ADMISSION NO. 11. Admit that Section 18-9-122(3), Colorado Revised Statutes, makes it a class three misdemeanor for a person to orally state, "Abraham Lincoln,

the sixteenth president of the United states, fired General McClellan because he considered his execution of the Union battle plan to be listless and without direction," to another person without the consent of such person before the communication occurs if such conduct is committed while within 100 feet of the entrance to a health care facility and while closer than 8 feet to another person.

RESPONSE NO. 11. Denied. Section 18-9-122(3) prohibits only those who "knowingly approach another person within eight feet of such person . . . for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education or counseling with such other person in the public way or sidewalk area within a radius of one hundred feet from any entrance door" to any "entity that is licensed, certified, or otherwise authorized or permitted by law to administer medical treatment" in the state of Colorado, without the consent of "such other Person." Not all the elements of the offense appear to be present in the given fact situation. However, the content of oral communication is irrelevant to the application of the statute.

REQUEST FOR ADMISSION NO. 12. Admit that Section 18-9-122(3), Colorado Revised Statutes, subordinates rights to freedom of speech, freedom of the press and freedom of assembly to purely private decisions of persons who pass within eight feet of speakers while those speakers are within 100 feet of the entrance to medical facilities.

RESPONSE NO. 12. Denied. Section 18-9-122(3) prohibits only those who "knowingly approach another person within eight feet of such person . . . for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education or counseling with such other person in the public way or sidewalk area within a radius of one hundred feet

from any entrance door" to any "entity that is licensed, certified, or otherwise authorized or permitted by law to administer medical treatment" in the state of Colorado, without the consent of "such other person" and "the First Amendment does not guarantee the right to communicate one's views at all times and places or in any manner that may be desired." Heffron v. ISKCON, 452 U.S. 640, 647 (1981).

REQUEST FOR ADMISSION NO. 13. Admit that loud speech such as shouting tends to be disturbing to others.

RESPONSE NO. 13. Denied. The impact of shouting depends on the context of the communication.

REQUEST FOR ADMISSION NO. 14. Admit that the State of Colorado has a compelling interest in securing the right to freedom of speech and of assembly for its citizens.

RESPONSE NO. 14. Defendant objects to this request as calling for a legal conclusion. Without waiving such objection, Art. II, sec. 10 of the Colorado Constitution provides that, "No law shall be passed impairing the freedom of speech; every person shall be free to speak, write or publish what he will on any subject, being responsible for all abuse of that liberty...." Art. II, sec. 24 of the Colorado Constitution provides that, "The people have the right peaceably to assemble for the common good, and to apply to those invested with the powers of government for redress of grievances, by petition or remonstrance."

REQUEST FOR ADMISSION NO. 15. Admit the fact that an individual who observes a sign from more than eight feet distance can disrupt its display under the terms of section 18-9-122(3), Colorado Revised Statutes, simply by denying consent for such display and remaining within eight feet of the person seeking to display the sign.

RESPONSE NO. 15. Denied. Section 18-9-122(3) prohibits

only those who "knowingly approach another person within eight feet of such person . . . for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education or counseling with such other person in the public way or sidewalk area within a radius of one hundred feet from any entrance door" to any "entity that is licensed, certified, or otherwise authorized or permitted by law to administer medical treatment" in the state of Colorado, without the consent of "such other person." Not all the elements of the offense appear to be present in the given fact situation.

REQUEST FOR ADMISSION NO. 16. Admit the fact that an individual who audits an oral expression of educational information from more than eight feet distance can disrupt its continued expression under the terms of section 18-9-122(3), Colorado Revised Statutes, simply by denying consent for expression of oral expression of educational information and then remaining within eight feet of the person seeking to orally express educational information.

RESPONSE NO. 16. Denied. Section 18-9-122(3) prohibits only those who "knowingly approach another person within eight feet of such person . . . for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education or counseling with such other person in the public way or sidewalk area within a radius of one hundred feet from any entrance door" to any "entity that is licensed, certified, or otherwise authorized or permitted by law to administer medical treatment" in the state of Colorado, without the consent of "such other person." Not all the elements of the offense appear to be present in the given fact situation.

REQUEST FOR ADMISSION NO. 17. Admit that a person walking on a public sidewalk or street can refuse to accept from another person pamphlets or handbills being distributed by such

other person on public sidewalks or streets.

RESPONSE NO. 17. Denied. A person's general ability to refuse handbills may be overcome by the number of people distributing handbills, their location, and the forcefulness of their tactics.

REQUEST FOR ADMISSION NO. 18. Admit that a person walking on a public sidewalk or street can ignore and pass by persons engaging in oral protest on a public sidewalk if the content such communication is not of interest to him.

RESPONSE NO. 18. Denied. The ability to ignore or pass by persons offering oral education varies, depending on the number and location of such persons, their aggressiveness and persistence, and the volume of their speech.

REQUEST FOR ADMISSION NO. 19. Admit that Section 18-9-122(3) authorizes criminal prosecution of any person, or entity, who fails to discontinue or restrict leafletting, picketing, or oral protest, education or counseling, when consent for such activity has been denied by a person who is closer than eight feet distance while the speaker is within 100 feet of the entrance to a medical facility.

RESPONSE NO. 19. Denied. Section 18-9-122(3) prohibits only those who "knowingly approach another person within eight feet of such person . . . for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education or counseling with such other person in the public way or sidewalk area within a radius of one hundred feet from any entrance door" to any "entity that is licensed, certified, or otherwise authorized or permitted by law to administer medical treatment" in the state of Colorado, without the consent of "such other person...." Not all the elements of the offense appear to be present in the given fact situation.

REQUEST FOR ADMISSION NO. 20. Admit that Section

18-9-122(3) authorizes government officials or government entities to prosecute persons who refuse to cease communications prohibited under Section 18-9-122(3).

RESPONSE NO. 20. Admitted.

REQUEST FOR ADMISSION NO. 21. Admit that a violation of Section 18-9-122(3), committed in the presence of a law enforcement officer, could justify the arrest and detention of the person who violated the provisions of Section 18-9-122(3).

RESPONSE NO. 21. Admitted in part. A citation rather than detention may occur. See § 16-3-105, C.R.S.

REQUEST FOR ADMISSION NO. 22. Admit that, incident to an arrest for violation of Section 18-9-122(3), a detained person could be subjected to a search of the person, and evidence of criminality could be seized.

RESPONSE NO. 22. Defendant objects to this request as vague. Defendant is unable to ascertain whether "incident to an arrest" means before, during, or after the arrest; whether the arrest is custodial; and what is included within "evidence of criminality."

REQUEST FOR ADMISSION NO. 23. Admit the evidence of a violation of Section 18-9-122(3) could include signs, pamphlets and/or literature used in the commission of the offense.

RESPONSE NO. 23. Admitted.

ANSWERS TO INTERROGATORIES

INTERROGATORY NO. 1. If you have denied any of the requests for admissions above, and if you have not already done so in making that denial, please identify all facts relied upon by you in making the denial and identify all persons known to you who have knowledge of those facts.

ANSWER NO. 1. See individual responses to requests for admissions. Persons having knowledge of the facts and law

relied upon: Carol D. Angel, Senior Assistant Attorney General; Patricia S. Bangert, Deputy Attorney General: Timothy M. Tymkovich, Solicitor General: and Gale A. Norton, Attorney General.

INTERROGATORY NO. 2. Please identify each and every individual or individuals answering each of the interrogatories, requests for admission and requests for production. Identify the interrogatory, request for admission or request for production to which each individual or individuals provided information utilized in the response.

ANSWER NO. 2. Carol D. Angel, Senior Assistant Attorney General (all requests): Patricia S. Bangert, Deputy Attorney General (all requests except for document production requests); Timothy M. Tymkovich, Solicitor General fall requests except for document production requests); and Gale A. Norton, Attorney General (all requests except for document production requests).

INTERROGATORY NO. 3. Please identify each and every person consulted or assisting in answering these interrogatories or requests for admissions or in gathering the documents requested below.

ANSWER NO. 3. Same as response to Interrogatory No. 2.

INTERROGATORY NO. 4. Please identify all experts you intend to call at the trial of this matter. Your response should include, but should not be limited to: (l) a brief summary of the experts' qualifications; (2) a summary of the experts' anticipated testimony; (3) the substance of the facts and opinions on which the experts are expected to testify; and (4) a summary of the grounds for each opinion.

ANSWER NO. 4. Defendants intend to call Dr. Warren Hern and Dr. Marianne LaFrance as expert witnesses. Summaries of their qualifications were included or attached to their affidavits

in the Appendix to Defendants' Motion for Summary Judgment filed March 7, 1994. Their anticipated testimony, the substance of the facts and opinions to which they are expected to testify, and the grounds therefore, are all as summarized in the above-referenced affidavits.

INTERROGATORY NO. 5. Please identify all witnesses you intend to call at the trial of this matter. Your response should include, but not be limited to, a brief summary of the witness' anticipated testimony.

ANSWER NO. 5. Defendant intends to call the witnesses listed in the attachment to the March l, 1994 letter from Carol D. Angel to James Matthew Henderson, Sr. and Roger Westlund, with the exception of Linda Weber, who has been withdrawn due to unavailability. Their anticipated testimony is as set forth in the same document, and their affidavits, where applicable. A copy of the letter and its attachment are attached for reference.

INTERROGATORY NO. 6. Please identify all individuals who have knowledge of the facts and circumstances at issue in this matter.

ANSWER NO. 6. Defendant objects to this interrogatory as overly broad. Without waiving that objection, Defendant believes that individuals who have knowledge of the facts and circumstances at issue in this matter include: the members of the Colorado General Assembly; persons who testified before the General Assembly regarding the passage of § 18-9-122(3), C.R.S.; law enforcement personnel; staff and volunteers at health care facilities; individuals seeking access to health care facilities; the witnesses listed by Defendant; the Plaintiffs in this case; and demonstrators near health care facilities.

INTERROGATORY NO. 7. Please state whether you have experienced difficulty in ensuring access to medical facilities

within your jurisdiction as a consequence of literature distribution, sign displays, oral protest, oral counseling or oral education. If so, for each such incident, please state the date, time and location of the incident, the nature of the medical facility to which access was jeopardized, and whether the disruption of access was ever remedied.

ANSWER NO. 7. Defendant objects to this interrogatory because of the ambiguity of the term "your jurisdiction" directed towards the Attorney General, who does not have primary criminal enforcement authority within the State of Colorado. Without waiving such objection, Defendant responds that incidents of access problems through out the state of Colorado were set forth in the testimony before the Colorado General Assembly concerning the passage of § 18-9-122(3) (previously provided to Plaintiffs) and in the affidavits accompanying Defendants' Motion for Summary Judgment.

INTERROGATORY NO. 8. Please identify any verbal or written comments made to you or in your presence by any member of law enforcement concerning the limitations imposed by Section 18-9-122(3), C.R.S., Section 5-3-10 of the Boulder Revised Municipal Code, or Section 38-114 of the Denver Revised Municipal Code. For each identified comment, please state:

a. The name and job title of the person making such comment.

b. The date and time that the comment was made.

c. The place where the comment was made.

d. The names and addresses of any person hearing or seeing the comment.

e. The circumstances existing at the time the comment was made.

f. Your reaction to the comment at the time it was made, if

any.

ANSWER NO. 8. Defendant can recall no such comments.

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 1. Produce copies of all documents identified, relied upon or referred to in responding to the interrogatories and requests for admissions set forth above.

RESPONSE NO. 1. Copies of March 1, 1994 letter and text of § 18-9-122 are attached. Legislative history and affidavits have been previously provided to Plaintiffs.

REQUEST FOR PRODUCTION NO. 2. Produce copies of all documents which you intend to rely upon or introduce as exhibits at the trial of this matter.

RESPONSE NO. 2. Defendant has not yet identified which documents it intends to use as exhibits. Once such documents have been identified, Defendant will supplement this response. Copies of videotapes which Defendant may use as exhibits are being produced with this response.

REQUEST FOR PRODUCTION NO. 3. Produce copies of all documents furnished to or produced by the experts identified in Interrogatory No. 4.

RESPONSE NO. 3. Copies of March l, 1994 and March 16, 1994 letters to Henderson from Angel attached. Affidavits have been previously provided to Plaintiffs. Copies of articles provided by Dr. Hern will be available for review and copying at the Office of the Attorney General, 1525 Sherman 3rd Floor, Denver, CO 80203.

REQUEST FOR PRODUCTION NO. 4. Produce copies of all documents furnished to or produced by the witnesses identified in Interrogatory No. 5.

RESPONSE NO. 4. Copies of March 1 and March 16 letters to Henderson from Angel attached. Affidavits have been

previously provided to Plaintiffs.

REQUEST FOR PRODUCTION NO. 5. Produce copies of all documents in your possession, custody or control which refer to or relate to the fact and allegations set forth in the pleading in the above-captioned matter.

RESPONSE NO. 5. Copies attached.

REQUEST FOR PRODUCTION NO. 6. Produce copies of all documents in your possession, custody or control which were sent to or received from individuals who are not parties to this action, but which documents refer to or relate to defenses of the constitutionality of Section 18-9-122(3).

RESPONSE NO. 6. Copies attached. Documents protected by attorney-client or attorney work product privileges not produced.

REQUEST FOR PRODUCTION NO. 7. Produce copies of all correspondence between yourself and any other defendant which in any way relates to this matter.

RESPONSE NO. 7. Defendant has no documents within this category which are not protected by the attorney-client or attorney work product privileges.

NOTICE OF APPEAL

I. THE NATURE OF THE CASE

A. The Nature of the Controversy

Appellants Hill, Himmelmann and Simpson filed this action in the district court to challenge the constitutionality, under the state and federal constitutions, of a new, criminal, statutory provision enacted by the State of Colorado, and threatened to be enforced by the City of Lakewood and the District Attorney for the First Judicial District of Colorado. Appellants sought a declaratory judgment that C.R.S. § 18-9-122(3) was

unconstitutional on its face, and as threatened to be applied to the peaceful, nonviolent expression of the Appellants. Appellants also sought preliminary and permanent injunctive relief against enforcement of the challenged statute.

The challenged statute, C.R.S. § 18-9-122(3), provides:

> No person shall knowingly approach another person within eight feet of such person, unless such other person consents, for the purpose of passing a leaflet or handbill to, displaying a sign to, or engaging in oral protest, education, or counseling with such other person in the public way or sidewalk area within a radius of one hundred feet from any entrance door to a health care facility. Any person who violates this subsection (3) commits a class 3 misdemeanor.

Hill, Himmelmann and Simpson, who are advocates of the pro-life viewpoint and who seek to offer counsel and assistance to women seeking abortions, contend that C.R.S. § 18-9-122(3) is unconstitutional on its face for several reasons. In particular, C.R.S. § 18-9-122(3) unconstitutionally restricts speech because it is overbroad, a prior restraint, vague, and content- and viewpoint-based. In addition, C.R.S. § 18-9-122(3) is unconstitutionally discriminatory in violation of the right to equal protection of the law.

B. The Judgment And Order From Which This Appeal Is Taken

On April 22, 1994, the Honorable Gaspar F. Perricone issued an opinion and order granting the Defendants' Motion for Summary Judgment, denying Plaintiffs' Motion for Summary Judgment, and dismissing the Verified Complaint. This Court has jurisdiction to hear and determine this appeal pursuant to C.R.S. § 13-4-102 and C.A.R. 4(a).

C. The Judgment Resolved All Issues Pending Before The Trial Court

The April 22, 1994, Order resolved all pending issues between the parties.

D. This Judgment Was Not Made Final Under C.R.C.P. 54(b)

The Order, dated April 22, 1994, disposed of all issues among all the parties. Consequently, the judgment from which this appeal is taken is not one that was made final pursuant to a court order under C.R.C.P. 54(b).

E. The Date Of Judgment And Of Mailing

The judgment from which this appeal is being taken was rendered on April 22, 1994 and mailed to counsel on the same day.

F. There Were No Post-trial Extensions Of Time To File Motions

No parties have sought post-trial relief or extensions of time to file post-trial motions.

G. There Were No Post-trial Motions Filed

No parties have filed any post-trial motions.

H. There Are No Dates For Denial Of Post-trial Motions

Because no parties have filed post-trial motions, there are no dates on which such motions were denied or deemed denied.

I. There Were No Extensions To File The Notice Of Appeal

No parties sought extensions of time to file a notice of appeal.

II. ADVISORY LISTING OF ISSUES TO BE RAISED ON APPEAL

In the view of Hill, Himmelmann and Simpson, this appeal raises the following issues:

1. Whether the trial court erred by concluding that C.R.S. § 18-9-122(3) is not substantially overbroad?

2. Whether the trial court erred by concluding that C.R.S. § 18-9-122(3) is not a prior restraint?

3. Whether C.R.S. § 18-9-122(3) provides the procedural safeguards required of a system of prior restraint on the exercise of rights of freedom of speech and of the press?

4. Whether the trial court erred by concluding that C.R.S. § 18-9-122(3) does not allow unbridled discretion in its enforcement?

5. Whether the trial court erred by concluding that C.R.S. § 18-9-122(3) does not impose, or create the danger of, content-based prohibitions of speech?

6. Whether C.R.S. § 18-9-122(3) is unconstitutional because it omits any standard which would prevent the enforcement of content-based restrictions on speech?

7. Whether the trial court erred by concluding that C.R.S. § 18-9-122(3) does not impose, or create the danger of, viewpoint-based prohibitions of speech?

8. Whether C.R.S. § 18-9-122(3) is unconstitutional because it omits any standard which would prevent the enforcement of viewpoint-based restrictions on speech?

9. Whether the trial court erred by concluding that C.R.S. § 18-9-122(3) is not unconstitutionally vague?

10. Whether the trial court erred by concluding that C.R.S. § 18-9-122(3) is narrowly tailored?

11. Whether the state may subject the state and federal constitutional rights implicated in handbilling, sign displays, oral education, oral counseling and/or oral protest, in the traditional public forum, to the private vetoes of citizens?

12. Whether C.R.S. § 18-9-122(3) is unconstitutional because it denies equal protection of the laws to all citizens?

13. Whether the trial court erred by denying Plaintiffs' motion for leave to file a memorandum of law exceeding ten pages in length in support of the Motion for Preliminary Injunction?

III. STATEMENT REGARDING TRANSCRIPT

No evidentiary hearing was held in the trial court. The trial court granted Defendants' motion for summary judgment. Consequently, no transcript is necessary for the resolution of the issues raised on appeal.

IV. PREARGUMENT CONFERENCE STATEMENT

Hill, Himmelmann and Simpson do not request the scheduling of preargument conference.

V. IDENTIFICATION OF COUNSEL

All the plaintiffs were represented in the trial court by:

Roger W. Westlund # 11084
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James Matthew Henderson, Sr. +
*
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+ *Not admitted in this jurisdiction.*

* *Admitted for purposes of this action by order of Judge Perricone*

Defendant David J. Thomas was represented in this action by:
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Defendants Gale Norton, the Attorney General of Colorado, and the State of Colorado were represented in this action by:
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Carol D. Angel, #13123
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VI. THE ORDER APPEALED

The decision and judgment from which this appeal is taken is attached hereto in the appendix.

[*Hill et al. v. Colorado et al.*, No. 98-1856]

The petition for a writ of certiorari is granted. The brief of petitioners is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Friday, November 12, 1999. The brief of respondents is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Monday, December 13, 1999. A reply brief, if any, is to be filed with the Clerk and served upon opposing counsel on or before 3 p.m., Thursday, December 30, 1999. Rule 29.2 does not apply.